

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 1261/KOL/2023
Assessment Year: 2017-2018**

***Aryavrat Vintrade Pvt. Ltd.,.....Appellant
14, Ganesh Chandra Avenue,
2nd Floor, Room No. 17,
Kolkata-700013
[PAN: AAHCA4737A]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-2(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri Miraj D. Shah, A.R., appeared on behalf of the
assessee*

*Shri P.P. Barman, Addl. CIT, appeared on behalf of the
Revenue*

**Date of concluding the hearing : January 24, 2024
Date of pronouncing the order : February 19, 2024**

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals), Income Tax

Department, National Faceless Appeal Centre (NFAC), Delhi dated 21.09.2023 passed for A.Y. 2017-18.

2. The assessee has taken three substantial grounds. In brief, its grievances are that ld. CIT(Appeals) has erred in confirming the additions of Rs.47,00,000/- and Rs.25,00,000/- which have been added with the aid of section 69 by treating as unexplained cash credit by the ld. Assessing Officer. The ld. CIT(Appeals) has confirmed these additions by way of the impugned *ex-parte* order.

3. The ld. Counsel for the assessee while taking us through the assessment order submitted that the return of income was filed on 12.10.2017 declaring 'NIL' income. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued on 16.08.2018. The ld. Assessing Officer thereafter issued notices under section 142(1) on different dates. The ld. Assessing Officer observed that on perusal of accounts, it revealed that there is a substantiate increase of Rs.47,00,000/- and Rs.25,00,000/- under the head "Current Investments" in unlisted equities and investment in preference shares respectively. The ld. Assessing Officer further recorded a finding that the assessee failed to substantiate the source of such investments and, therefore, these investments are to be treated as unexplained cash credit, though he made addition under section 69 instead of section 68. In this way, ld. Assessing Officer has made addition of Rs.72,00,000/-.

4. On appeal, ld. 1st Appellate Authority has dismissed the appeal for want of prosecution.

5. The ld. Counsel for the assessee submitted that for making any addition under section 69, there should be an investment, which was not recorded in the books. The opening sentence of section 69 would contemplate that where in the financial year immediately preceding assessment year, the assessee has made investment and such investment has not been recorded in the books of account maintained by the assessee. In the present case, ld. Assessing Officer has himself observed that investments are recorded in the books, therefore, how such investments can be treated as unexplained investment. The ld. Assessing Officer has investigated the issue with the angle of section 68 of the Income Tax Act where unexplained cash credits are required to be examined. For buttressing his contention, he relied upon the judgment of the Hon'ble Gujarat High Court in the case of Ushakant N. Patel –vs.- CIT reported in 282 ITR page 553. On the strength of this judgment, he contended that since ld. 1st Appellate Authority has dismissed the appeal for want of prosecution and ld. Assessing Officer has not analytically examined the issue under the correct provisions, therefore, the issue be remitted back to the file of ld. Assessing Officer in case additions are not deleted.

6. On the other hand, ld. D.R. relied upon the order of ld. Assessing Officer.

7. On due consideration of the above facts and circumstances, we are of the view that sub-section (6) of section 250 contemplates that ld. 1st Appellate Authority would state the points in dispute and thereafter record reasons on such points. In the present case, ld. CIT(Appeals) has reproduced the assessment order and thereafter observed that he has issued number of notices to the assessee, which remained un-complied with and thus it be concluded that assessee failed to substantiate the appeal with any new material. He followed the decision of the Hon'ble ITAT, whereby appeals were dismissed for want of prosecution. It is pertinent to note that this procedure of disposal of appeal is not in accordance with the mandate given under sub-section (6) of section 250. Hence, the order of ld. CIT(Appeals) is not sustainable. Since an irregularity crept in the proceeding of the ld. CIT(Appeals), therefore, ideally the issue be instituted afresh before the ld. 1st Appellate Authority but we find that ld. Assessing Officer has also not examined the issue with the angle of section 69, rather he took the conditions of section 68 where unexplained cash credit is required to be explained by the assessee and applied on the issue of investment, which are already recorded in the books. Apart from the above, it is to be appreciated that if he set aside this issue to the file of ld. CIT(Appeals), a fresh report would be called for from the ld. Assessing Officer and unnecessarily proceeding would be instituted at two different places, namely before the ld. Assessing Officer for verifying the records in order to submit the remand report and before the ld. CIT(Appeals), where appeal to be decided afresh. Thus we deem it appropriate in the interest of

justice to set aside the issue to the file of Id. Assessing Officer for re-examination and re-adjudication.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 19/02/2024.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 19th day of February, 2024

- Copies to :*(1) *Aryavrat Vintrade Pvt. Ltd.,*
14, Ganesh Chandra Avenue,
2nd Floor, Room No. 17, Kolkata-700013
- (2) *Income Tax Officer,*
Ward-2(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069
- (3) *Commissioner of Income Tax (Appeals),*
Income Tax Department, National Faceless
Appeal Centre (NFAC), Delhi;
- (4) *CIT_ ,Kolkata;*
- (5) *The Departmental Representative;*
- (6) *Guard File*

TRUE COPY

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.