

Tribunal confirms the addition of share premium on taxpayer's repeated failure to prove genuineness and creditworthiness of the investors

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In brief

In a recent decision,¹ the Ahmedabad Income-tax Appellate Tribunal (Tribunal) held that the mere filing of confirmation letter or by receiving money through the banking channel or by filing Permanent Account Number (PAN) particulars does not discharge the taxpayer's onus, as most of the information/ details filed were either incomplete or incorrect and no justifiable explanation was provided by the taxpayer. It is the onus of the taxpayer to prove genuineness beyond doubt.

In detail

Facts

- The taxpayer was engaged in the business of manufacturing PVC pipes. During the year under consideration, it issued shares of face value of INR 10 each at a premium of INR 90 per share and credited the same in the books of accounts. The taxpayer filed its return of income for the assessment year (AY) 2002-03, reporting a loss.
- The Tax Officer (TO), having noticed the decline in net profit (although increase in turnover), initiated assessment proceedings under the Income-tax Act, 1961 (the Act), asked the taxpayer to file the reason for loss and provide sufficient information for the exorbitant share premium received during the year.
- Owing to the failure in furnishing any details and justified explanations, the assessment was completed on the best judgement basis by adding share premium received by the taxpayer.
- On appeal, the taxpayer furnished details about the share premium paying parties. (i.e. names, dates, PAN and photocopies of confirmation in few cases). Such additional evidence was rejected by the Commissioner of Income-tax (Appeals) [CIT(A)], as the dates mentioned in the chart and the dates of receipt of such amounts mentioned in the Balance Sheet did not tally, and it contained incomplete information. Accordingly, the CIT(A) confirmed the TO's order.
- Before the Tribunal the taxpayer contended that its books of account could not be produced for verification, as its premises were sealed by the banks. As the premises have been de-sealed, the taxpayer pleaded an opportunity of being heard. Consequently, the Tribunal referred both the issues for reconsideration by the TO after affording sufficient opportunity to the taxpayer.
- Consequently, the TO issued notice seeking response on details of share premium. In response, the taxpayer contended that relevant books could not be presented in view of the

¹ ITA No. 1679/ Ahd/ 2014

Civil Court's order sealing its premises. Accordingly, the TO reiterated his earlier additions in the second round of proceedings.

- In the second round, several remand reports were furnished by the TO before the CIT(A). However, the taxpayer furnished no new relevant details in response. Accordingly, after perusal of all the remand reports, the CIT(A) confirmed the impugned additions. Aggrieved, the taxpayer filed an appeal before the Tribunal.

Issues before the Tribunal

Whether additions made with respect to the share premium received are justified?

Tribunal's ruling

- The taxpayer's conduct in not

being able to file even a single original confirmation, and subsequently, furnishing all photocopies of such confirmation, which pertained to the same date indicated a serious genuineness issue.

- The information/ details filed by the taxpayer were either incomplete or incorrect and the taxpayer provided no justifiable explanation. The taxpayer has failed to prove the identity, genuineness and creditworthiness of the share premium parties in question.
- Further, the Tribunal noted that some of the share premium paying parties did not even have PAN and one such party had applied for PAN only during the first round of proceedings.
- Therefore, the Tribunal

concluded that the instant plea without any other substantive evidence proving genuineness did not inspire acceptance on mere technical grounds and the taxpayer had repeatedly failed in proving the genuineness of its share premium in question.

The takeaways

The judgment highlights the importance of timely compliance with the notices issued by tax authorities and furnishing complete and correct information during the lower proceedings, which can be substantiated holistically in the appellate proceedings.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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