

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

श्री राजेश कुमार, लेखा सदस्य
एवं
श्री अनिकेश बनर्जी, न्यायिक सदस्य
के समक्ष

Before
**SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
SRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.: 1069/KOL/2023
Assessment Year: 2011-12**

***M/s. Dahisar Traders Pvt. Ltd.....Appellant
[PAN: AAECD 4722 F]***

Vs.

ITO, Ward-7(1), Kolkata.....Respondent

Appearances:

Assessee represented by: Sh. Manoj Kataruka, A/R.

Department represented by: Sh. P.P. Barman, Addl. CIT, Sr. D/R.

Date of concluding the hearing : February 15th, 2024

Date of pronouncing the order : February 20th, 2024

ORDER

Per Anikesh Banerjee, Judicial Member:

The instant appeal of the assessee was filed against the order of Ld. Commissioner of Income-tax (appeals)-NFAC, Delhi [in brevity ld. 'CIT(A)'] dated 24.08.2023 passed u/s 250 of the Income Tax Act, 1961 (in brevity the 'Act') for assessment year 2011-12. The impugned order was emanated from the order of the ld. Income Tax Officer, Ward-10(4), Kolkata (in brevity the 'AO') passed u/s 147 read with Section 143(3) of the Act dated 19.12.2018.

2. The assessee has taken the following grounds of appeal:

"1. That the reopening made by the Assessing officer u/s 147 of the Act, on the order passed u/s 148 of the Act, is without jurisdiction and therefore,

the action of the Ld. CIT(A) and confirming the order of the AO is erroneous and bad in law.

2. That on the facts and in the circumstances of the case, the action of the Ld. CIT(A) in confirming the action of the AO, in having issued erroneous notice u/s 148 of the Act and having passed an illegal order u/s 147 is arbitrary, excessive and illegal.

3. That on the facts and in the circumstances of the case the non-est order passed by the AO in the name of a non-existing company and confirmed by the Ld. CIT(A) is illegal and bad in law.

4. That on the facts and in the circumstances of the case, the action of the Ld. CIT(A) to confirm the action of the AO in making addition of Rs.9,36,00,000/- on account of unexplained money cash credit u/s 68 of the Act is contrary to the material evidences on record and the addition is arbitrary, excessive and illegal.

5. That on the facts and in the circumstances of the case, the action of the Ld. CIT(A) to confirm the action of the AO in making addition of Rs.775/- u/s 14A of the Act is contrary to the material evidences on record and the addition is arbitrary, excessive and illegal

6. That the order of the Ld. CIT(A) confirming the action of the A.O. is arbitrary, excessive and illegal.

7. That the above grounds of appeal will be argued in details at the time of hearing and the appellant craves leaves to submit additional grounds of appeal if any and or alter, vary, modify or rectify the statement of facts and grounds of appeal at or before the time of hearing.”

3. Brief facts of the case are that the assessee is a company and running the business in the name of M/s. Dahisar Traders Pvt. Ltd. Previously the company is running in the name of M/s. Visage Equipment Pvt. Ltd. Later on, the company, M/s. Visage Equipment Pvt. Ltd is merged with the assessee-company. The assessee company has received amount from M/s. Falcon Tyers Ltd. (in short 'FTL') amounting to Rs. 9.36 Crore and the same amount was transferred to his sister concerned M/s. Miller Traders Pvt. Ltd. (in short 'MTPL'). The notice u/s 133(6) of the Act was issued. The MTPL has complied the notice and filed all the documents related to receiving of the fund from the assessee. But the notice u/s 133(6) of the Act was not served to FTL and FTL had not complied before the Assessing Officer (in short ld. 'AO') related to his payment of fund to assessee company. Accordingly, the identity of the source

of the fund was not proved. So, u/s 68 of the Act the amount of Rs. 9.36 Crore was added to the total income of the assessee. The aggrieved assessee filed an appeal before ld. CIT(A). The ld. CIT(A) upheld the assessment order. The assessee has challenged both the legal and factual grounds related to re-opening u/s 148 of the Act before the ITAT on being dissatisfied with the appeal order.

4. The ld. A/R, Mr. Manoj Kataruka, Advocate appeared and vehemently argued. The written submissions were submitted which are kept in the record. First, the ld. A/R invited our attention to the recorded reason which is reproduced as below:

“The assessee company was incorporated since March, 2010 and engaged in a business of trading and investment of shares. Return of income was filed declaring loss at Rs. 5,979/- on 06.09.2011 and the same was duly processed u/s 143(1) of the Act on 20.01.2012 without raising any demand/refund.

Credible information received on 14.03.2018 wherein it is reported that the assessee company opened one bank a/c on 03.04.2010 bearing No. 3102115000022713. On perusal of the bank statement it has been observed that Rs. 9.36 crore was carried out in the account in the month of July, 2010 through RTGS. Electronic clearing also reveals that the amount was cleared one bank a/c having No. 1728100648 maintained with Central Bank of India in the name of M/s. Falcon Tyres Ltd. followed by immediate transfer to the bank a/c bearing No. 01792000000764 maintained with Kotak Mahindra Bank in the name of M/s. Miller Traders Pvt. Ltd. through RTGS.

On perusal of the departmental database (ITBA System) it was found that the assessee company declared gross revenue operation/gross turnover/gross receipt Rs. 3,52,28,800/- only against the total receipt of Rs. 13.03 crore. Moreover, the alleged bank account was not disclosed in the return of income filed as per u/s 139(1) of the Act. Summon u/s 131 of the Act was issued and duly served but neither any directors nor any authorised representatives did turn up.

In the light of the above discussion adverse inference may be drawn prima facie that the entire unaccounted credit of Rs. 13.03 crore remained undisclosed as the bank a/c was not reflected in the books of accounts for the F.Y. 2010-11 relevant to the AY 2011-12. So, I have reason to believe that the assessee company has concealed its income of Rs. 13.03 crore. In this case 4 years has been elapsed but 6 years from the end of the relevant AY 2011-12 has not been expired, the only requirement is to initiate

proceeding u/s 147 of the Act recording "reason to believe" which has been recorded above.

In view of the above facts, the provisions of clause (b) of explanation 2 of Section 147 is applicable to the facts of this case and deemed to be a case where income chargeable to tax has escaped assessment.

Accordingly, the file is put up before the Pr. CIT-4, Kolkata for favour of his kind perusal and necessary sanction u/s 151 of the Act to issue notice u/s 148 of the Act, if approved."

5. Mr. Kataruka, ld. AR has placed that the recorded reason is a borrowed satisfaction and the company who had invested the fund to assessee company, FTL was never be proved as a sham company. So, the entire transaction is valid, and the fund was received by the party, MTPL was duly appeared and complied the notice u/s 133(6) of the Act by submitting the evidence before the ld. AO. So, completing the verification, the ld. AO issued notice u/s 147 of the Act which is arbitrary and bad in law. The legal ground was not agitated before any of the lower authorities. So, the entire issue is directly submitted before the ITAT afresh and argued accordingly.

6. Ld. D/R vehemently argued and submitted that the FTL is a shell company. Here, the source of transacted amount was not proved. For contravening Section 68 of the Act, the entire addition was confirmed by the ld. AO. Ld. D/R prayed to uphold the assessment order.

7. We heard the rival submissions and considered the documents available in the record. The case has two aspects; factual and legal. In the factual aspect the assessee has able to prove the transaction of fund to MTPL and complied the notice u/s 133(6) of the Act. But in case of FTL, the assessee was not able to prove the identity and source of the person for non-compliance of the notice u/s 133(6) of the Act. Even no such evidence was submitted before the AO to prove the genuineness of the transactions. In case of legal issue, it is clearly evident that the issue is freshly agitated before the ITAT. Even before the AO the issue was not agitated and the objection was not filed by the assessee during the time of assessment proceedings. The ld. A/R had relied on the order of the Hon'ble **Delhi High Court** in the case of **CIT vs. Insecticides (India) Ltd. reported in [2013] 357 ITR 330 (Delhi)** where if

the re-opening of the assessment on the vague allegation that on basis of the report of Director of Income-tax (Inv.), the assessee was involved in accommodation entries without specifying details thereof and without disclosing the said report of the Director of Income-tax (Inv.) the entire assessment was invalid. But in assessee's case the issue is covered the legal aspect and it is agitated first time before the Bench. So, in our considered view, we remit back the matter to the file of the AO for further adjudication *de-novo* both in legal as well as factual aspect of the assessee and assessee is also directed to submit all the relevant documents and be diligent before the AO. Needless to say, that assessee should get a reasonable opportunity of hearing in the set aside proceeding.

8. In the result, **ITA No. 1069/KOL/2023** is allowed for statistical purposes.

Order pronounced in the open Court on 20th February, 2024.

Sd/-

[Rajesh Kumar]

Accountant Member

Sd/-

[Anikesh Banerjee]

Judicial Member

Dated: 20.02.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **M/s. Dahisar Traders Pvt. Ltd., 2/7, Sarat Bose Road, 6th Floor, Kolkata-700 020.**
2. **ITO, Ward-7(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata