

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

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.441/Kol/2020
Assessment Year: 2010-11

ACIT(Central Circle)-1, Raipur.....Appellant

vs.

M/s Ace Trexim Pvt. Ltd..... Respondent
ABIPN, House No.11, Jal Vihar Colony,
Raipur(C.G), Chhatisgarh.
[PAN: AAGCA5027N]

Appearances by:

Shri Amuldeep Kaur, Addl. CIT, appeared on behalf of the appellant.

Shri A.K. Tibrewal, AR and Saurabh Gupta, FCA, appeared on behalf of the Respondent.

Date of concluding the hearing : January 24, 2024

Date of pronouncing the order : February 27, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the revenue against the order dated 31.01.2020 of the Commissioner of Income Tax(Appeals)-4, Kolkata [hereinafter referred to as the 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The revenue in this appeal has taken the following grounds of appeal:

"1. On the facts and in the circumstances of the case, the ld. CIT(A) erred in law in deleting the addition of Rs.2,20,00,000/- made by the Assessing Officer on account of unexplained funds of the said amount received from M/s Solvent Real Estate Pvt. Ltd.

2. On the facts and in the circumstances of the case, the ld. CIT(A) erred in law in not appreciating the reliability of the relevant substantial information received from Investigation Wing of Kolkata and also erred in ignoring that the Assessing Officer had made efforts to confront such

information to the assessee at the last known address available with him.”

3. The brief facts of the case are that the assessee filed its return of income on 16/09/2010 declaring total loss at Rs. 9015/-. In this case the Assessing Officer received information from DDIT Investigation Unit 1(2), Kolkata that the assessee had received funds worth Rs. 2.20 crores from Solvent Real Estate Private Limited. It was also informed that the nature and source of funds in the hands of Solvent Real Estate Private Limited remained unexplained. The DDIT Investigation Unit 1(2), Kolkata informed that the assessee has received funds worth Rs. 2.20 crores from the bank account of Solvent Real Estate Private Limited. On the basis of this information the assessing officer reopened the case u/s. 147 of the Income Tax Act, 1961 after taking necessary approvals from the competent authority. The Assessing Officer issued notice u/s 148 of the Act to the assessee. In response to which the assessee filed its submissions and further also filed return of income. However, the Assessing Officer has noted that thereafter the assessee did not file any details or evidences to prove the genuineness of the transaction. The Assessing Officer thereafter treated the said amount of Rs.2,20,00,000/- as unexplained income of the assessee and added the same into the income of the assessee.

4. Being aggrieved, the assessee preferred appeal before the CIT(A). Before the CIT(A), the assessee pleaded that the Assessing Officer has wrongly and illegally passed the ex parte order that the assessee had not received a single notice for hearing at the address mentioned in the Income Tax Return of the assessee. It was stated before the CIT(A) that the assessee had requested the Assessing Officer vide letter dated 19.04.2017 that all the future correspondences should be sent at his address at ABIPN, House No.11, Jal Vihar Colony, Raipur-492001.

However, the Assessing Officer kept on sending notices on the earlier address which were not received by the assessee. It was also submitted that the nature and source of the amount received of Rs.2,20,00,000/- from M/s Solvent Real Estate Pvt. Ltd was duly explained that it was on account of sale of investment. The assessee furnished all the documents relating to the transaction, whereupon, the ld. CIT(A) called for a remand report from the Assessing Officer. The ld. CIT(A) has noted in the impugned order that despite all the materials submitted by the assessee forwarded to the Assessing Officer, however, no comments have been received from the Assessing Officer despite giving number of opportunities. Thereafter, the ld. CIT(A) proceeded to examine the documents himself. The assessee in this respect has relied upon the assessment order passed in the case of M/s Solvent Real Estate Pvt. Ltd., wherein, the issue relating to the investments made by the said M/s Solvent Real Estate Pvt. Ltd. was duly considered and it was noted by the Assessing Officer that the said M/s Solvent Real Estate Pvt. Ltd. had invested Rs.9,96,50,000/- in shares and the Assessing Officer had also computed the disallowance u/s 14A r.w.r. 8D of the Act upon such investments. The ld. CIT(A) noted that in the aforesaid assessment order in the case of M/s Solvent Real Estate Pvt. Ltd., no adverse view was taken by the Assessing Officer in the case of the said company regarding purchase of investments from the assessee. He further observed that the financial statements of M/s Solvent Real Estate Pvt. Ltd., wherein, the investments were more than 19,00,00,000/- have been shown. The ld. CIT(A) also noted that from the bank statement of M/s Solvent Real Estate Pvt. Ltd., the transactions with the assessee were duly reflected. The ld. CIT(A) further noticed that in spite of bank details of the assessee as well as that of M/s Solvent Real Estate Pvt. Ltd. available with the Assessing Officer, no enquiry was conducted by

the Assessing Officer. He further noted that the Assessing Officer simply relied upon the information received from the Investigation Wing and published the same. The ld. CIT(A) having examined the documents of the assessee held that no disallowance was warranted in this case.

5. Before us, the ld. AR of the assessee has submitted that apart from the submissions on merits, it was submitted before the Assessing Officer and further reiterated before the CIT(A) that reopening of the assessment was bad in law as the Assessing Officer did not make any independent enquiry and simply relied upon the information of the Investigation Wing and acted on the basis of borrowed satisfaction. It was also submitted that the amount was neither received as share application money nor as secured or unsecured loans or any advance. That the amount was received against sale of shares by the assessee.

6. We find that the only information received by the Assessing Officer from Investigation Wing was that the assessee had received funds worth Rs.2,20,00,000/- from M/s Solvent Real Estate Pvt. Ltd. through banking channel. Further, it has been noticed that initially funds were deposited into bank account of M/s Solvent Real Estate Pvt. Ltd which were not commensurate to its turnover. It was found that the funds were ultimately transferred from banking channel to the assessee from the bank account of M/s Solvent Real Estate Pvt. Ltd. In our view, the aforesaid confirmation only pertains to the transfer of fund from M/s Solvent Real Estate Pvt. Ltd. to the assessee. However, this information is not enough to form the belief that the income of the assessee for the year has escaped assessment. What has been alleged in the information was that the receipt of funds of M/s Solvent Real Estate Pvt. Ltd. from some other source was not commensurate to its turnover. However, the ld. AR has placed reliance on page 12 of paper-book to show that the turnover of the said M/s Solvent Real Estate Pvt. Ltd. for the financial

year ending on 31.03.2010 was 37.69 crores. Mere receipt of funds by the assessee from M/s Solvent Real Estate Pvt. Ltd. in no terms be said to be any information of escapement of income of the assessee. It has been held time and again that the belief of the Assessing Officer regarding escapement of income should be based on some tangible information and it should not be mere pretence of the Assessing Officer. Therefore, in this case, in our view, the Assessing Officer did not have valid reason for reopening of the assessment. Even otherwise, no additions have been made in the case of M/s Solvent Real Estate Pvt. Ltd. and its source of funds have not been doubted by the Assessing Officer. In view of this, we do not find any infirmity in the order of the CIT(A) and the same is upheld. There is no merit in the present appeal of the revenue and the same is accordingly dismissed.

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

Kolkata, the 27th February, 2024.

Sd/-

[गिरीश अग्रवाल /Girish Agrawal]
लेखा सदस्य/Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 27.02.2024.

RS

Copy of the order forwarded to:

1. ACIT(Central Circle)-1, Raipur
2. M/s Ace Trexim Pvt. Ltd
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches