

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA

BEFORE SHRI J. SUDHAKAR REDDY, AM & SHRI S. S. GODARA, JM

आयकर अपीलसं./I.T.A No.401/Kol/2018

(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s Lucky Holdings Pvt. Ltd. (as successor of Hanuman Coke Plant Pvt. Ltd.) 16B, Shakespeare Sarani, 2 nd Floor, Kolkata – 700071.	Vs.	DCIT, Circle-5, Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACH7763E		
(Appellant)	..	(Respondent)

Appellant by : Shri Subash Agarwal, Advocate

Respondent by : Shri Supriyo Pal, JCIT, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 16/10/2019

घोषणाकीतारीख/Date of Pronouncement : 27/11/2019

आदेश / O R D E R

Per Shri S. S. Godara:

This assessee's appeal for assessment year 2010-11 arises against the Commissioner of Income Tax (A) - 2, Kolkata dated 23.08.2017 passed in Case No.752/CIT(A)-2/14-15 involving proceedings u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

Heard both the parties. Case file perused.

2. It emerges at the outset that this assessee's appeal suffers from 128 days' delay in filing stated to be attributable to its amalgamation exercise with another company as per the condonation petition dated 05.03.2018. The Revenue is fair enough in not disputing all these solemn averments. Hon'ble apex court's landmark decision in Collector, Land Acquisition vs. MST Katiji & Ors. [1987] 167 ITR 471 (SC) held long back that the cause of substantial justice must prevail over technical aspects. We therefore condone the assessee's 128 days' in filing the instant appeal as attributable to circumstances beyond control. The case is now taken up for adjudication on merits.

3. Coming to main appeal, the assessee's former substantive ground challenges correctness of the lower authorities' action making section 69 addition of Rs.12,27,942/- on account of alleged difference in transaction in the share broker entity M/s Share India Securities Ltd. The CIT(A)'s detailed discussion to this effect affirming the impugned disallowance reads as under:

"Ground No. -2.

The grounds of appeal as raised by the assessee against the order of the assessing officer are as under:-

For that on the facts and in the circumstances of the case the learned Deputy Commissioner of Income Tax erred in making an addition of Rs.12,27,942/- as unexplained investment u/s. 69 of the I. T. Act on account of alleged difference in transactions with M/s. Share India Securities Limited."

The AR of the appellant during the appellate proceedings, furnished written submissions as under:

"Ground No. 2 relates addition of Rs. 12,27,942/- made to the total income of the appellant u/s. 69 of the Act holding the same as unexplained investment on account of alleged difference between the figures of transactions with M/s. Share India Securities Ltd. (Stock Broker) appearing in the books of the assessee .and the figures reported in ITS details of the department

The fact of the case are that the assessee had share purchase' and sales transactions with M/s. Share India Securities Ltd. with whom during the year the assessee had total transaction to the extent of Rs.623,96,265/-. Copy of ledger account/confirmation as appearing in the books of account of said M/s. Share India Securities Ltd. was filed before the Deputy Commissioner of Income-Tax during the course of assessment proceeding along with ledger copy of account as appearing in the books of the assessee. It was also explained before him that the figures shown in the ITS details are not correct. Unfortunately, the learned Deputy Commissioner of Income-Tax without considering the submissions of the assessee and the documents produce before him arbitrarily and merely on the basis of the figures reported in the ITS details treated the differential figure of Rs.12,27,924/- as unexplained investment and added the same to the income of the appellant u/s. 69 of the Act. It is therefore, most respectfully, submitted that the learned Deputy Commissioner of Income-Tax was highly unjustified in making the aforesaid addition of Rs.12,27,924/- to the income of the appellant without any basis. It is therefore, prayed that the addition should be deleted."

I have considered the submissions of the authorized representative of the appellant as well as the assessment order framed in the light of the materials available on record before the assessing officer during the assessment proceedings. The A.O has mentioned that as transpires from the ITS details that the assessee has entered into share transactions of Rs.63624207/- on 31.03.2010 through Share India Securities Ltd. The assessee has entered into the share transaction of Rs. 62396265/- through Share India Securities Ltd and failed to explain the difference and source of Rs.12,27,942/- which is not recorded in the books of assessee, Therefore, Rs. 1,2,27,942/- is considered as unexplained investment u/s. 69A and added back to the total income. I agree with the view as taken by the A.O in the matter. The appellate has failed to explain the difference as mentioned in the assessment order. On view of above, the order of the A.O is upheld. This ground of appeal is dismissed."

4. We have given our thoughtful consideration to the rival contentions. Mr. Agarwal invites our attention to the assessee's detailed paper book running into 88 pages regarding the instant issue involving copy of transaction statement, list of

transactions of broker entity (supra), other entities' ledger accounts, broker's ledger, bank statement reflecting the share transactions, reconciliation statement of share transactions and ledger account of M/s FMS Securities in assessee's books. The case accordingly is that it had duly reconciled the impugned alleged difference before the lower authorities as under:

2010-11 Assessment of M/s. Hanuman Coke Plant Pvt Ltd.		
Reconciliation Statement of Share Purchase and Sales Transactions with M/s. Share India Securities Ltd. for the year 2009-10		
01/04/2009 Opening Balance as per own books		508.49
Total of Transaction held during the year		63,017,113.32
		<u>63,017,621.61</u>
Transaction related to M/s. F. M. S. Securities Ltd. wrongly entered to the A/c. of said party		
<u>Date</u>	<u>Amount</u>	
31.03.10	676,054.76	
LESS		
Balance Adjustment of various	54698.03	621,356.73
Total of Actual Transaction		<u>62,396,264.76</u> #

Certified To Be True Copy A/R

5. The Revenue strongly supported both the lower authorities' action regarding impugned unexplained investment addition. It had chosen to rely upon relevant "ITS details" indicating the difference in question. We find no merit in Revenue's instant argument going by the above extracted reconciliation statement forming part of the assessment and the CIT(A)'s records which has nowhere been rebutted in either of the two proceedings. We accordingly accept the above reconciliation as correct and delete the impugned addition of Rs.12,27,942/-. The Assessing Officer is directed to finalize necessary computation as per law.

6. Next comes the latter issue of undisclosed interest income of Rs.1,52,000/- made in both the lower proceedings. We do not see the CIT(A)'s adjudication qua

the same in his order under challenge. The fact also remains that it requires factual reconciliation at the Assessing Officer's end since the assessee has filed its ledger account with M/s Singhal Enterprises in its books. We therefore restore the instant latter issue back to the Assessing Officer for factual verification. This second substantive ground is accepted for statistical purposes.

7. This assessee's appeal is partly allowed in above terms.

Order is pronounced in the open court on 27.11.2019.

Sd/-
(J. Sudhakar Reddy)
ACCOUNTANT MEMBER

Sd/-
(S. S. Godara)
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date:27/11/2019

RS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant - M/s Lucky Holdings Pvt. Ltd. (as successor of Hanuman Coke Plant Pvt. Ltd.)
2. The Respondent - DCIT, Circle-5, Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.