

आयकर अपीलीय अधीकरण, न्यायपीठ – “ए” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “Virtual Court A” KOLKATA*

Before **Shri J.Sudhakar Reddy, Accountant Member** and
Shri S.S.Godara, Judicial Member

ITA No.1173/Kol/2019
Assessment Year: 2013-14

Income Tax Officer Ward-2(3), Aayakar Bhawan, 7 th Floor, Room No. 21, P-7, Chowringhee Square, Kolkata-700 069	बनाम/ V/s.	Gorsia Marine Equipment Pvt.Ltd., Flat No.403, Block-94, Buroshibtolla Main Road, Kolkata-27 [PAN No.AAACG 9636 P]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Dhrubajyoti Ray, JCIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shr Akkal Dudhwawala, CAi
सुनवाई की तारीख/Date of Hearing	10-09-2020
घोषणा की तारीख/Date of Pronouncement	23-09-2020

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee’s appeal for assessment year 2013-14 arises against the Commissioner of Income Tax (Appeals)-5, Kolkata’s order dated 15.01.2019 passed in case No.558/CIT(A)-5/Wd.2(3)/2018-19/Kol. involving proceedings 144 of the Income Tax Act, 1961; in short ‘the Act’.

Heard both the parties. Case file(s) perused.

2. With the consent of both the learned representative(s) and in view of the Revenue’s averments in its condonation petition / affidavit dated 20.02.2020, we

condone the impugned delay of eleven days' in filing the case. The case is now taken up for adjudication on merits.

3. The Revenue's first and foremost substantive grievance pleads that the CIT(A) has erred in law and on facts in deleting the sec. 68 of unexplained cash credits addition of ₹2,50,000/- in the nature of assessee's share application money added in the course of assessment framed on 17.03.2016 despite the fact that the same lack of genuineness / creditworthiness. It transpires at the outset *qua* the instant issue that the CIT(A) has deleted the impugned addition for the precise reason that the amount in question had not been credited in the assessee's books in the relevant previous year from 01.04.2012 to 31.03.2013. Learned authorized representative has invited our attention to assessee's audited financial statement including balance-sheet, profit & loss account, notes to account as well as bank statement in pages 1 to 11 to this effect in the paper book. The CIT(A)'s discussion in page-3 has also taken note of the said material only as under:-

“There is merit in the submissions made by the appellant. The AO in the assessment order had disallowed share premium received in earlier years as unexplained cash credits u/s 68 of the Act in A.Y 2013-14/-. On verification from the balance sheet of the appellant for earlier years, it is found that share premium of Rs.2,50,00,000/- has been appearing in the balance sheet of the appellant from A.Y 2008-09. It is apparent that the share premium of Rs.2,50,00,000/- has been added back in the wrong assessment year u/s. 68 of the Act. The assessment order was passed u/s 144 of the IT Act, 1961 due to non-cooperation by the appellant. However, the AO should have examined the balance sheet of the appellant which was available to him, where it has been clearly shown the share premium of Rs.2,50,00,000/- was reflected as on 31.03.2011 and as on 31.03.2012. From the above details it is clear that the no share premium was raised in A.Y 2013-14. As discussed above, the share premium was raised earlier years. Therefore, the addition is bad in law and cannot be sustained. The order passed u/s 144 of the Income-tax Act, 1961 is best judgment assessment in which the AO shall take into account all relevant material which he has gathered and after giving the appellant sufficient opportunity being heard, make assessment of the total income or loss to best of judgment and determined the sum payable by the appellant. This section does not give arbitrary power to the AO to make the assessment on his whims and fancies. The assessment order should be based on material available with the AO and shall be reasonable estimate. It appears that the AO has not considered the audited accounts available with him while making the addition. There are plethora of case laws referred to below which have held that the order u/s. 144 should be decided with wisdom and not based on arbitrary caprice of the AO but on settled and invariable principles of justice.”

4. Learned departmental representative's argument in this factual backdrop is that such unexplained cash credits can very well be added even if they have not credited in the relevant previous year in issue. We find no merit in the instant argument in view of the hon'ble Bombay high court's at Goa very recent decision in **Tax Appeal No. 29 of 2013** in the case of *Shri Ivan Singh vs. Asstt. Commissioner of Income-tax Circle-1(1), Panaji / The Commissioner of Income-tax, Panaji* dated 14.02.2020 making it clear that the clinching statutory expression "**that previous year in sec. 68**" of the Act has to be interpreted the previous year relevant to the assessment year in issue only. We therefore see no merit in Revenue's instant first substantive grievance. The same stand rejected therefore.

5. Next comes the Revenue's second substantive grievance challenging the CIT(A)'s action partly / restricting assessee's expenditure disallowance of ₹5,62,738/- to ₹56,274/- i.e. @ 10% in the lower appellate discussion. Suffice to say, there is no rebuttal coming from the Revenue's side that the assessee had very well filed all the corresponding details and evidence on records and the Assessing Officer had disallowed the entire claim amount under various head(s). We therefore see no merit in the Revenue's second substantive grievance as well.

6. Now comes to Revenue's third substantive grievance seeking to revive unexplained cash credits addition of ₹11,01,350/- made in the course of assessment and restricted to ₹20,694/-. We notice with the able assistance of both the learned representative(s) that the assessee's cash-in-hand-cum-books of account as on 01.04.2012 was ₹3,98,519/- followed by similar withdrawals / deposit his cash-in-hand on 31.03.2013 was at ₹,06,974/- only remaining unexplained from the taxpayer's side. This is what appears to have been prompted the CIT(A) could add the balance figure of ₹2,06,974/- only. All these facts and figures have remained undisputed from the Revenue's side. We thus see no reasons to revive the entire addition figure in question. This third and last substantive ground is also rejected therefore.

7. We lastly notice that although the Revenue has pleaded its technical ground that alleging violation of Rule 46A of Income Tax Rules, 1962 whilst admitting additional evidence in lower appellate proceedings, we however see no material on record which could indicate any such admission of additional evidence in the CIT(A)'s detailed discussion. This fourth substantive grievance is also rejected therefore.

8. This Revenue's appeal is dismissed.

Order pronounced in open court on 23/09/2020

Sd/-
(लेखा सदस्य)
(J.Sudhakar Reddy)
Accountant Member

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
Judicial Member

*Dkp-Sr.PS

दिनांक:- 23/09/2020 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ITO Wd-2(3) Aayakar Bhawan, 7th Floor, R.No. 21, P-7,Chorwinghee Square, Kolkata-69
2. प्रत्यर्थी/Respondent-Gorsia Marine Equipment Pvt. Ltd., Flat No. 403, Block-94 Buroshibtolla Main Road, Kolkata-27
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता/DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।