

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH : KOLKATA

[Before Hon'ble Shri J.S Reddy, AM and Hon'ble Shri S.S. Godara, JM

I.T. A No.1217/Kol/2019A.Y 2011-12

M/s. Purulia Metal Casting
Pvt. Ltd.

PAN: AADCP4189P

(Appellant)

Vs.

DCIT, C.C-4(1), Kolkata

(Respondent)

For the Appellant/Assessee

: Shri Miraj D. Shah, Ld. AR

For the Respondent/Department

: Shri Imokaba Jamir, CIT/DR

Date of Hearing (Virtual) : 09-12-2020

Date of Pronouncement : 15-12-2020

ORDER

Shri S.S. Godara, JM:

This assessee's appeal for assessment year 2011-12 arises against the CIT (Appeals), 21, Kolkata's order dated 11-04-2019 passed in case No. 10861/CC-4(1)/CIT(A)-21/2016-17 involving proceedings u/s 143(3)/153A of the Income-tax Act, 1961 in short the 'Act'.

We have heard both the parties. Case file perused.

2. The assessee has raised the following substantive grounds in the instant appeal:-

2. For that on the facts and in the circumstances of the case, it be held that in absence of incriminating material the assessment order u/s. 153A/143(3) is without and/ or in excess of jurisdiction and bad in law and on the facts and hence be concealed and or annulled and or the additions made in the assessment order be deleted.

3. For that on the facts and in the circumstances of the case, the assessing officer erred in making addition of Rs.11,31,00,000/- on account of unaccounted money introduced in the books as bogus share / premium u/s. 68 of the I.T. Act is uncalled for and unjustified. This addition should thus be deleted.

4. For that on the facts and in the circumstances of the case, the assessing officer erred in not allowing the claim of Rs.11 ,31 ,00,000/- being cost of improvement while computing long term capital gain on sale of land. The disallowance is uncalled for unjustified and thus the same be reversed.

5. For that on the facts and in the circumstances of the case, the assessment order passed was in violation of principals of natural justice hence, is bad in law and be quashed.

3. We advert that the assessee's main substantive grievance(s) that both the lower authorities have erred in law and on facts in framing the impugned assessment u/s. 143(3)/153A of the Act, without there being any incriminating material found or seized during the course of search. Learned authorized representative invited our attention to the assessment year 2011-12 involving the search in question dated 12-03-2016, be stated that this is an instance of unabated assessment since the relevant limitation prescribed u/s. 143(2) of the Act for initiating scrutiny was over on 30.09.2012. Mr. Shah next took us through the assessment order dated 25.12.2016 indicating the Assessing Officer's discussion that the assessee issued 50,000 and 63,100 of shares at a premium of Rs. 990/- per unit to its twin entities M/s. Kuber Vincom Pvt. Ltd & M/s. Shakshi Vanijya Pvt. Ltd involving sum(s) of Rs. 5,00,00,000/- and Rs. 6,31,00,000/- respectively; totaling to Rs. 11,31,30,000/-. The Assessing Officer made it clear that these entities are shell companies having dummy directors.

4. The Revenue has strongly supported that the assessment u/s. 153A has been justify treated deleting its total income 70 Taxmann.com 234 (Kerala) in the case of Commissioner of Income-tax, Trichur. vs. ST. Francis Clay Decor Tiles, 49 Taxmann.com 98 (Kar) in the case of Canara Housing Development Co. vs. DCIT, Central Circle-1(1), Bangalore, 27, Taxmann.com 167 (AP) in the case of Gopal Lal Bhadraka vs. DCIT and 75 Taxmann.com 215 (Kerala) in the case of E.N.Gopakumar vs. CIT (Central) Learned. CIT-DR placed

reliance on the Assessing Officer's detailed discussion that the impugned share application money deserves to be added as unexplained cash credits u/s 68 of the Act.

5. We have given our thoughtful consideration to rival submissions. We make it clear that we are dealing with assessment year 2011-12 and the search in question dated 12-03-2015 apparent that no assessment was pending. Case law PCIT vs. M/s Salasar Stock Producing Ltd. GA No. 929 of 2016 ITA No. 264 of 2016 dated 24.08.2016, CIT vs. Veeraprashee Marketing Ltd. (2016) 73 taxmann.com 149 (Cal), CIT vs. Kabul Chawla (2016) 380 ITR 573 (Del) and CIT vs. Sinhgad Education Society (2017) 397 ITR, 344 (SC) that assessment u/s. 153A of the Act involving unabated proceedings has to be based on incriminating material found or seized during the course of the search in question. We go by the above said hon'ble jurisdictional high court at the cost of non-jurisdictional high courts (supra) and hold that both the lower authorities have erred in law and on facts in framing the impugned assessments in assessee's case not involving any seized material. The same stands quashed therefore.

6. Coming to later issue on merits as well, we reiterate that the impugned share application has been raised from assessee's group entities only involving common directors and these assessments are also in the same jurisdiction. The assessee has already filed all the necessary evidence. We thus hold that the lower authorities have not correctly appreciated the fact. Hon'ble Gujarat high court in PCIT vs. Gyscoal Alloys Ltd Tax Appeal No. dated 1-10-2018 held that such an instance of the share capital having group entities from thereby jurisdiction does not qualify for section 68 unexplained cash credits additions :-

"I have carefully considered the fact of the case, the assessment order and the written submission of the appellant. The appellant has received an amount of Rs. 9,99,99,900/- on account of share capital and share premium from M/s. General Capital and Holding Co.Pvt. Ltd,

Ahmedabad during the year. The AO held that the creditworthiness and the genuineness of the transaction were not proved by the appellant and accordingly made the addition under section 68 of the Act for the above amount. The appellant has submitted that all three ingredients such as, credit worthiness, genuineness and the identity of the share applicant have been proved and therefore, the addition should not have been made by the AO.

C/TAXAP/1180/2018 ORDER During the course of appellate proceedings, the assessment records were also obtained from AO and the same have also been examined by me to ascertain the facts correctly. The share applicant company M/s. General Capital has been duly confirmed the fact of making investment in the appellate company. The amounts have been received through banking channel. The same are duly reflected in the annual accounts of that company. The extracts of the bank statement which have been filed before me during the course of appellate proceedings as well as before the AO clearly show that there are no cash deposits as mentioned by the AO in the assessment order. The observation of the AO that the cash has been deposited and subsequently cheques were issued is factually incorrect. The director of the company also attended before AO and confirmed the fact. It is also noted that both the companies, that is the appellant company as well as the share applicant are managed by the same group of persons. Honourable High Court of Gujarat has consistently held that if the assessee has given sufficient proof in respect of the share application, no addition can be made in the hands of the assessee. If the AO has any doubt about the Source of the share applicant further investigation can be made in the hands of the share applicant, but not in the case of the appellant. ."

C/TAXAP/1180/2018 ORDER It can thus be seen that the entire issue is based on appreciation of material on record. CIT [A] and the Tribunal concurrently came to the conclusion that the assessee had discharged its basic onus. The investors have confirmed the transactions. Such transactions were carried out through the banking channel. The director of the investing company had also appeared before the Assessing Officer and also confirmed the transactions. The CIT [A] and the Tribunal also did not confirm the Assessing Officer's finding that the assessee failed to establish the creditworthiness or genuineness of the transactions. No question of law arises. Tax Appeal is dismissed.

7. We adopt the above detailed discussions *mutatis mutandis* and delete the impugned additions made u/s. 68 on merits as well.

8. The assessee's appeal is allowed in above terms.

Order pronounced in the Court on 15-12-2020

Sd/-

[J.Sudhakar Reddy]
Accountant Member
Dated : 15 -12-2020

Sd/-

[S.S.Godara]
Judicial Member

**PRADIP, Sr. PS

Copy of the order forwarded to:

1. Appellant/Assessee: M/s. Purulia Metal Casting Pvt. Ltd 31 Ganesh Ch. Avenue, 4th Fl., Kolkata-13.
2. Respondent/Department: Deputy Commissioner of Income Tax, Cir-10(1), AaykarBhawanPurva, 110 E.M Byepass, Kolkata-107.
- 3..C.I.T(A).- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Assistant Registrar
H.O.O/D.D.O Kolkata