

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 4937/Del/2017
(Assessment Year: 2011-12)

M/s. Green Field Estates, 2 nd Floor, Divya Drishti Building, Opposite Mithibai College, JVPD Scheme, Ville Parle, (West) Mumbai – 400 056. PAN: AAIFG6397A	Vs.	ACIT, Central Circle-27, New Delhi
(Appellant)		(Respondent)

Assessee by :	None
Department by :	Ms. Sunita Singh [CIT] – DR
Date of Hearing	09/06/2021
Date of pronouncement	24/06/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order dated 3.04.2017 passed by the Ld. CIT (Appeals)–31, New Delhi, for assessment year 2011-12.
2. Assessee has raised the following grounds of appeal:-

1) *On the facts and in the circumstances of the case and in law the assessment order passed by the learned AO under section 143(3) r. w. s. 153A of the I T Act is illegal, bad in law and null and void as the same is without the jurisdiction. The assessment order dated 30th March 2016 passed under section 143(3) of the I T Act was final. The appellant hereby requests your honour to kindly quash the assessment order and oblige.*

2) *On the facts and in the circumstances of the case and in law the assessment order passed by the learned AO under section 143(3) r. w. s. 153A of the I T Act is illegal, bad in law and null and void as the same is without the jurisdiction as no incriminating document was found during the course of search action and the assessment proceedings were unabated in terms of proviso to section 153A of the I T Act. The appellant hereby requests your honour to kindly quash the assessment order and oblige.*

3) *On the facts and in the circumstances of the case and in law the assessment order*

passed by the learned AO under section 143(3) r. w. s. 153A of the I T Act is illegal, bad in law and null and void as the learned AO made addition on the basis of statement of one Mr. Pravin Agarwal recorded under section 132(4) of the I T Act. The appellant requested for cross examination of Mr. Parvin Agarwal to the learned AO as well as the honourable CIT(A). However, the appellant was denied opportunity of cross examination. The appellant hereby requests your honour to kindly quash the assessment order as illegal, bad in law and oblige.

4) On the facts and in the circumstances of the case and in law the honourable CIT(A) erred and is not justified in enhancing the assessment order by converting the protective addition to substantive addition without issuing notice under section 251(2) of the I T Act. The appeal order passed by the honourable CIT(A) is illegal and bad in law. The appellant hereby requests your honour to kindly quash the order as illegal, bad in law and oblige.

5) On the facts and in the circumstances of the case and in law the honourable CIT(A) erred and is not justified in confirming addition of Rs. 1,25,00,00,000/- (Rs. One Hundred Twenty Five Crore only) made by the learned Assessing Officer on the ground that the appellant has failed to establish genuineness of the development expenditure claimed and has further failed to satisfy the conditions laid down under section 37(1) of the I T Act. The honourable CIT(A) failed to appreciate the fact that the appellant had produced all the details before the learned AO and almost all payments were subjected to Tax Deducted at source and have been made by account payee cheques. The appellant hereby requests the addition may please be deleted.

6) The appellant hereby reserves the right to add, amend or delete ground/s of appeal. “

3. Brief facts of the case shows that search and seizure operation u/s 132 of the income tax act 1961 was carried out on 20 June 2013 in PACL group of cases. The case of the assessee was also covered Under the provisions of Section 132 (1) of the act. Therefore notice u/s 150 3A of the act was issued to the assessee on 2 November 2015 in response to which the assessee filed return declaring total income of ₹ 33,352,121/- on 24/11/2015. This was also the original return filed on 30 September 2011. As per the information available the assessee was incorporated on 22 August 2009 and this was the only second year of the existence and assessee is engaged in the business of land acquisition and development in real estate. Assessee has received contract from PACL and has also subcontracted the work to the other parties. Total land development activity carried out by the assessee was to the tune of ₹ 230 crores for the above company. The assessee was also asked to explain the nature of the transaction and the identity, creditworthiness and genuineness of the transactions with the 5 parties with which it has entered into a transaction of 125 crores which are the companies owned and controlled by one Mr Praveen Agarwal who was an entry operator and accommodation entry provider.

The assessee objected to the assessment proceedings stating that notice u/s 143 (2) of the income tax act was not issued to the assessee within the prescribed time limit of six months from the end of the assessment year i.e. on or before 30 September 2012. Search u/s 132 of the act was conducted on the assessee on 20 June 2013 and hence assessment for assessment year 2011 – 2012 will be considered as completed with respect to the assessment u/s 150 3A of the income tax act. Since no notice u/s 143 (2) is issued within the prescribed time the assessment is final and hence it cannot be abated. The assessee also objected that there is no incriminating document or material exist against the assessee. Assessee also requested the copy of the statement of Mr Praveen Agarwal recorded u/s 132 (4) of the act and asked for the opportunity of the Cross examination. Assessee also submitted that no addition can be made in the hence of the assessee as assessee has booked expenses of land development against the sale or income to be received from PACL Ltd and assessee has only earned marginal profit in this case which has already been offered for taxation. The learned assessing officer considered the explanation of the assessee and rejected the same. He held that lot of evidences in the form of seized documents and statement recorded on oath have been found during the search indicating receiving of accommodation entries by PACL Ltd and therefore the assessment is being made on the basis of the incriminating material found during the course of search and further the statement of Mr Praveen other was categorically stated that he is merely an accommodation entry provider and all the companies to whom the assessee has paid ₹ 125 crore on account of subcontracting are controlled by him. The learned AO further referred several statements recorded of the employees of Sri Praveen Agarwal who are dummy directors of those companies. Accordingly the learned assessing officer held that the payment of rupees hundred and 25 crores to the 5 Kolkata-based companies are accommodation entries provided by the assessee company to PACL Ltd. He disallowed the above expenditure paid to this company and added back to the total income of the assessee on protective basis as the assessee has merely provided a accommodation entries to PACI Ltd and substantive addition of ₹ 125 crore will be made in the hands of that company PACL Ltd. Additionally he also made an addition of commission at the rate of 0.10% amounting to ₹ 1,250,000. Accordingly the total taxable income was assessed at ₹ 1,284,602,121/- against the income declared of ₹ 33,352,121/-. Thus he made a protective addition of ₹ 125 crores in the hands of the assessee company along with the addition of ₹ 1,250,000 on account of commission paid to the accommodation entry provider. Assessment order u/s 153A of the income tax act was passed on 30th of March 2016.

4. Assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned Commissioner of income tax (appeals) – 31, New Delhi who passed an order on 3 April 2017. The learned CIT – A in the detailed order held that assessee has

failed to establish the genuineness of the expenditure debited in the books of account and when it is so, the assessing that authority was Under a statutory obligation to decide as to what substantive treatment was needed to be given in the light of the above provisions of the act. Since the appellant had failed to prove the allowability of expenses debited in the books of accounts, the learned assessing officer was required to disallowed the above expenditure irrespective of the treatment given by the other party connected to the said transaction. Accordingly, the learned assessing officer rightly disallowed the no prude expenses. However he held that the fundamental provide, which the AO has ignored, when he despite having recorded a satisfaction that the appellant does not have evidences to prove the genuineness of the expenditure debited, is that he was Under a statutory obligation to disallowed the claim substantive Leanne not protectively. Since even in the present appeal proceedings also the appellant has failed to prove the expenses debited in its books of account, the action of the AO in making the disallowance of ₹ 125 crores is upheld but on substantive basis the learned CIT – A also directed the learned assessing officer to give effect to this finding is accordingly. Therefore, the learned CIT – A held that addition is required to be made in the hands of the assessee on substantive basis by disallowing the expenditure of ₹ 125 crores which was made by the learned assessing officer on protective basis. With respect to the addition of commission of ₹ 1,250,000 he held that as the addition has been made purely on estimated basis and surmises and no incriminating material has been brought on record with respect to the making this addition and therefore this addition has no legs to stand. Accordingly he deleted the addition. Thus he partly allowed the appeal of the assessee confirming the addition of ₹ 125 crores in hands of the assessee on substantive basis and deleting the addition of ₹ 1,250,000 which is merely on the basis of conjectures and surmises and without any evidences. Thus assessee is aggrieved with that order has preferred this appeal as per above mentioned grounds of appeal.

5. The above appeal has been listed for hearing on 15 December 2020 and none appeared on behalf of the assessee. On that date bench directed to issued the notice by registered post to the assessee fixing the next date of hearing on 8 February 2021.
6. On 8 February 2021 none present and for the assessee and the bench directed the registry to issued the notice by registered post by fixing the date of hearing on 13 April 2021.
7. Further on 13 April 2021 none appeared on behalf of the assessee and the bench directed the registry to the issue notice by registered post fixing the date of hearing on 9 June 2021.
8. Even on 9 June 2021 none appeared on behalf of the assessee and therefore now, the issue is decided on the merits of the case.

9. The learned departmental representative CIT DR Ms Sunita Singh was heard.
10. We have carefully considered the contentions raised by the learned CIT DR as well as the findings of the lower authorities. We find that in this case the search took place on 20 June 2013 in a group of cases and the assessee was also covered in that such. The notice u/s 150 3A of the income tax act was issued to the assessee on 2 November 2015. The assessment is framed Under the provisions of Section 153A of the income tax act for assessment year 2011 – 12 based on several incriminating material stated by the assessing officer coupled with the several statement including the statement of Mr Praveen Agarwal an accommodation entry provider, therefore the jurisdiction has properly been resumed by the learned assessing officer. More so when in the remand report dated 9 March 2017 the learned assessing officer has categorically stated that during the course of search the impounded material in the form of (bundle number 5) contains the details of the various invoices issued by the assessee to PACL Ltd amounting to ₹ 230 crores and it was found that no actual work has been carried out by the assessee or the parties to whom the assessee has subcontracted those work. In view of this there are incriminating material found during the course of search coupled with the statement of the entry operators which clearly proved that the assessing officer has rightly assumed the jurisdiction and asked the assessee to prove the identity creditworthiness and genuineness of the subcontractors who perform the work and whose expenditure has been booked by the assessee in the profit and loss account. Further more as the addition has been made u/s 37 (1) of the act as the assessee has failed to prove the genuineness of the expenditure incurred, therefore they have been rightly disallowed by the learned assessing officer and confirmed by the learned and CIT appeal respectfully following the decision of the honourable Delhi High Court in case of Modi stone Ltd in ITA number 1203/2006 dated 6 may 2011 and the decision of the honourable Bombay High Court in case of Mount finance Ltd dated 28 July 2011. As the addition/disallowance has not only been made only on the basis of the statement of Mr Praveen Agarwal but on the part of the failure of the assessee to prove the genuineness of the work carried out. Therefore there is no requirement of giving any opportunity of cross-examination of Mr Praveen Agarwal to the assessee's as the addition is not solely been made on that basis.
11. As the learned assessing officer has made the addition in the hence of the assessee on protective basis and the learned CIT – A has confirmed the addition in the hence of the assessee on substantive basis by disallowing the expenditure, we set-aside the whole issue back to the file of the learned assessing officer to verify that if the addition has been made on substantive basis in the hands of PACL Ltd and assessee has already been charged tax on the income, then the addition of disallowance of the expenditure in the hence of the assessee requires to be deleted as it will amount to double addition of the same income. Even otherwise the real beneficiary of this accommodation entry is PACL

Ltd. If the substantive addition has not been sustained or made in the hence of the PACL Ltd then the order of the learned CIT – A deserves to be confirmed and addition is required to be made in the hence of the assessee.

12. Accordingly, the appeal filed by the assessee is set-aside to the file of the learned assessing officer with above direction.

Order pronounced in the open court on 24/06/2021.

-Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 24/06/2021.

MEHTA

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi