

आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष के समक्ष ।
BEFORE SRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ ITA No. 7957/Mum/2019
(निर्धारण वर्ष / Assessment Year 2011-12)

Tista Technologies Ltd. Shop No. 5, Ground Floor, Bldg. No. Y3, Salvador CHS Shashtri Na Lokhandwala Comp, Andheri, Mumbai-400 053	Vs.	The Income Tax Officer Ward-11(3)(1) 2 nd Floor, Aayakar Bhawan, Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAAC3250A		

अपीलार्थी की ओर से / Appellant by	:	Shri Abhishek Jhunjunwala, AR
प्रत्यर्थी की ओर से / Respondent by	:	Smt. Smita Verma, DR

सुनवाई की तारीख / Date of hearing:	27.09.2021
घोषणा की तारीख / Date of pronouncement :	27.09.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /
PER MAHAVIR SINGH, VP:

This appeal of the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-18, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-18/IT-10437/ITO-11(3)(1)/18-19 vide dated 28.11.2019. The Assessment was framed by the Income Tax Officer, Ward-11(3)(1) Mumbai (in short ITO/ AO) for the A.Y. 2011-12 vide order dated 17.12.2018 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the addition made by Assessing Officer of ₹5 lacs under section 68 of the Act allegedly received from Shubhankar Vinimay Pvt. Ltd.



3. I have heard the rival contentions and gone through the facts and circumstances of the case. I noticed that the assessee before Assessing Officer as well as before CIT(A) stated that the amount of ₹5 lacs, the alleged payment made by Shubhankar Vinimay Pvt. Ltd., was never made to the assessee but was made to sister concern Alankar Tech Pvt. Ltd. This fact is noted by the Assessing Officer in his assessment order and even by Commissioner of Income Tax (Appeals). The learned counsel for the assessee Shri Abhishek Jhunjhunwala stated the fact that the reassessment of Alankar Tech Pvt. Ltd. also noted this fact by the Assessing Officer i.e. ITO, ward 10(2)(4), Mumbai on the same issue. He drew our attention to assessee's paper book at page 4, wherein the assessment order of Alankar Tech Pvt. Ltd. for Assessment Year 2011-12 order dated 17.12.2018 is enclosed and this fact has been discussed in Para 3 which read as under:-

"3. The assessee is engaged in business of trading of goods and investments in Real estate. The assessee furnished explanation to the reasons recorded for re-opening of assessment i.e. transaction of ₹5,00,000/- with Subhankar Vinimay Pvt. Ltd, and produced Bank statement copy to substantiate that the credit received on 13.01.2011 from Subhankar Vinimay Pvt. Ltd was through a Bank error which has been reversed by the bank on 17-01-2011, and also that there are no other transactions between the period 13-01-2011 to 17-01-2011. Subject to the data and materials provided, the returned loss of ₹22,426/- of the assessee company is accepted."

4. I noted that the Assessing Officer also noted this fact that on the same amount and same payment in Para 5 and the relevant portion reads as under:-



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“.... On perusal of copy of bank statement of M/s Subhakar Vinimay Pvt. Ltd, it is noticed that on 13.01.2011, an RTGS credit of ₹5,00,000/- was made in favour of M/s. Tista Technologies Pvt. Ltd. In this regard, a show cause notice dt. 22.11.2018 was issued and served requiring the assessee to explain as to why the amount of ₹ 5,00,000/- received from M/s. Subhakar Vinimay Pvt. Ltd during the A.Y. 2011-12 should not be treated as unexplained credit. In response, the assessee submitted letter dated 26.11.2018 wherein it has been stated that the alleged payment of ₹5,00,000/- made by M/s Subhakar Vinimay Pvt. Ltd. was made to the sister concern M/s. Alankar Tech Pvt. Ltd. and not to the assessee. The reassessment for M/s. Alankar Tech Pvt. Ltd. is currently ongoing before ITO-Ward 10(2)(4), Mumbai on same issue. In absence of any receipt by the assessee, the addition of unexplained cash credit under section 68 cannot be made. To substantiate its claim the assessee submitted bank statement of assessee, M/s Alankar Tech Pvt. Ltd. and M/s. Subhakar Vinimay Pvt. Ltd.....”

5. From the above, it is clear that this amount of ₹5 lacs received from Subhakar Vinimay Pvt. Ltd, was received by assessee's sister concern Alankar Tech Pvt. Ltd and not by the assessee. Hence, addition made by Assessing Officer and confirmed by CIT(A) is deleted. The orders of the lower authorities are reversed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 27.09.2021.

Sd/-
(महावीर सिंह /MAHAVIR SINGH)
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 27.09.2021

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai