

आयकर अपीलीय अधिकरण
मुंबई पीठ "एच"
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री गगन गोयल, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
आअसं.554/मुं/2021 (नि.व. 2013-14)
ITA NO.554/MUM/2021 (A.Y.2013-14)

Dy. Commissioner of Income Tax,
Central Circle -1(2), Mumbai,
906, 9th Floor, Pratistha Bhavan,
Old CGO Bldg.(Annexe),
MK Road, Mumbai 400 020

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. Hiranandani Palace Gardens Pvt. Ltd.
(In Liquidation through Ms. Chetna P.Sutaria,
Official Liquidator),
C-8,9 & 10, Satyam Shopping Center,
Mez Floor, MG Road, Ghatkopar(E),
Mumbai – 400 077
PAN: AACCC-8862-H

..... प्रतिवादी/Respondent

C.O. NO.163/MUM/2021
[Arising out of ITA No. ITA NO.554/MUM/2021(A.Y.2013-14)]

M/s. Hiranandani Palace Gardens Pvt. Ltd.
(In Liquidation through Ms. Chetna P.Sutaria,
Official Liquidator),
Mumbai – 400 077.

..... Cross Objectors

बनाम Vs.

Dy.Commissioner of Income Tax,
Central Circle -1(2), Mumbai.

... Appellant in Appeal

Revenue by : Smt. Leena Srivastava
Assessee by : Ms. Kinjal Bhuta & Shri Jayesh Kapani

सुनवाई की तिथि/ Date of hearing : 24/03/2022
घोषणा की तिथि/ Date of pronouncement : 13/06/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals) -47, Mumbai [in short 'the CIT(A)'], dated 12/01/2021 for the assessment year 2013-14. The assessee has filed Cross Objections raising legal ground challenging validity of assessment proceedings u/s. 153C of the Income Tax Act, 1961 [in short 'the Act'].

2. Ms. Kinjal Bhuta appearing on behalf of the assessee made two fold submissions. The first submissions was that satisfaction u/s. 153C of the Act has been recorded by the Assessing Officer on 10/03/2015. The said satisfaction is combined for assessment years 2008-09 to 2013-14, hence, there is no separate satisfaction for the assessment year 2013-14. The Id. Authorized Representative for the assessee further pointed that a perusal of para-7 of satisfaction note would show that there is no reference to assessment year specific incriminating material. The incriminating material seized during the course of search that was provided to the assessee by the Assessing Officer is at pages 3 to 23 of the paper book. The only letter which pertains to assessment year 2013-14 is letter dated 22/03/2013, wherein the assessee had requested Burki 1 Ltd. Mauritius for infusion of fresh capital to meet financial commitments. Apart from the said letter no other document was seized which pertains/relates to the assessment year 2013-14. The Id.

Authorized Representative for the assessee asserted that a perusal of the said letter would show that the said letter cannot be considered as incriminating material as in the said letter the assessee had made request to Burki 1 Ltd. for introduction of fresh capital. The said letter does not have any bearing on the income of the assessee. It is not a letter of foreclosure of any loan. No investment was received by the assessee during the relevant assessment year from Burki 1 Ltd. In fact there was no incriminating material to suggest any financial transaction during the period relevant to the assessment year under appeal. The Id. Authorized Representative for the assessee further submitted that no assessment was pending for the assessment year 2013-14. Even the time limit for issuance of notice u/s. 143(3) of the Act had elapsed. The Id. Authorized Representative for the assessee submitted that it is a well settled law that where there is no incriminating material leading to addition and there is no pending assessment, the assessment proceedings u/s 153C of the Act are not sustainable. To support her contention the Id. Authorized Representative for the assessee placed reliance on the following decisions:

- (1) *CIT vs. Gurinder Singh Bawa, 79 taxamann.com 398 (Bom) and*
- (2) *PCIT vs. Jignesh P. Shah, 99 taxamann.com 111(Bom).*

2.1 The Id. Authorized Representative for the assessee further referred to the order of CIT(A) for assessment year 2013-14, wherein the CIT(A) had confirmed the addition on the basis of alleged incriminating material. The Id. Authorized Representative for the assessee pointed that a perusal of para-18 of impugned order would show that there is no reference to incriminating material in the entire findings of CIT(A) confirming the addition. The CIT(A) used the expression, *"In the said papers there are several entries referring to*

money received and foreign investment.....”. However, the CIT(A) has not pointed what are the entries and how much amount is involved therein. The CIT(A) further used the expression *“some incriminating material was found*”, however what is the incriminating material pertaining to the assessment year under appeal has not been pointed by the CIT(A). The CIT(A) in a vague and unspecified manner has referred to incriminating material. The Id. Authorized Representative for the assessee prayed that in the light of the facts and decision the assessment made u/s. 153C of the Act be quashed.

3. Per contra, Smt. Leena Srivastava representing the Department vehemently defended the assessment order and the findings of CIT(A) in confirming the addition made on account of incriminating material found during the course of search.

4. We have heard the submissions made by rival sides and have examined the orders of authorities below. The Revenue in appeal has assailed the findings of CIT(A) on two counts: (1) In deleting disallowance of business loss; and (2) In deleting the addition on account of interest income received by the assessee on fixed deposits. The assessee has offered interest income under the head ‘Business Income’ per contra the Assessing Officer has held the said interest income as ‘Income from Other Sources’. In so far as the grounds raised by the Revenue are concerned, we find that the same additions were made in the original assessment order. In first appeal by the assessee, the CIT(A) had deleted the addition. The findings of CIT(A) were confirmed by the Tribunal in an appeal by the Revenue. There was no fresh incriminating material on this issue and since there was no pending assessment, therefore, the Assessing

Officer could not have made the additions again in proceedings u/s. 153C of the Act. We concur with the findings of CIT(A). The appeal of Revenue is devoid of any merit, hence, dismissed.

5. The assessee in Cross Objection has raised legal ground challenging validity of assessment u/s. 153C of the Act sans incriminating material.

6. The only document on record alleged to be incriminating material relevant to the assessment year under appeal is a letter dated 22/03/2013.

The same is reproduced herein below:

“Sub : Fresh Capital for the Company

As you are aware, the Board of Directors of the Company, has in the past, successfully managed the cash flow and had-obtained loans inter alia from HDFC Limited, Yes Bank and Tata Capital Limited ("Project Loan"), currently outstanding to an extent of- Rs. 595 Crores.

The Company has deployed the proceeds of the Project Loan in its operations. However, the Company requires additional capital to meet its liquidity needs to be able to service and repay the debt as per the terms of the facility entered into with the respective Banks and Financial Institutions. The Project Loan installments which were due for repayment and monthly/quarterly interest thereon has not been paid since September 2012. The Company needs further cash infusion in order to meet the commitments under the Agreements as it is not able to refinance its current obligations under the s or raise third party debt on commercially reasonable terms.

The Board of Directors of the Project Company at its meeting held on 29-Oct-2012 and 01-Feb-2013 had reviewed and noted the debt position of the Company and resolved to try and make alternate arrangements.

The Board of Directors in its meeting held on March 22, 2013 has passed a resolution to make a capital call on existing shareholders. Accordingly, pursuant to the provisions of Article 4 (per Article -4 of the Articles of Association of 'he Company) read with the Companies Act, 1956, you are called upon to contribute to the Company a sum of Rs. 100 Crs. being your additional capital contribution within a period of 21 days from the date of receipt of this notice. The Company shall allot 223,691 equity shares @ 4,470 per share (Face Value Rs. 10 & Share Premium of Rs.4,460 per share)

Thanking you,

We remain,

Sincerely Yours.

For HIRANANDANI PALACE GARDENS PVT. LTD."

A bare perusal of the above letter would show that the assessee had made a request to Burki 1 Ltd. Mauritius for infusing fresh capital. The said letter does not in any manner reflect that there was any financial transaction between the assessee and Burki 1 Ltd. during the period relevant to the assessment year under appeal. There is no documents apart from the aforesaid letter suggesting that Burki 1 Ltd. had made commitment for investing in assessee company, much less to suggest that there was actual financial transaction between Burki 1 Ltd. and the assessee during the period relevant to assessment year under appeal. Therefore, the aforesaid letter cannot be construed as incriminating material giving rise to any financial transaction in the impugned assessment year.

7. It is an undisputed fact that for assessment year 2013-14 there was no pending assessment. Apart from additions made in the original assessment no new addition was made on the basis of alleged incriminating material. The satisfaction note refers to the seized documents wherein entries indicate investments and raising of debts and foreclosure from Mauritius entities, however, in the assessment order no addition has been made with reference to such transactions.

It is no more res-integra that in the absence of incriminating material in the case of non-abated/concluded assessments no additions can be made in the proceedings under section. 153C of the Act [*Re: CIT vs. Gurinder Singh Bawa (supra)*]. A perusal of the documents on record in the instance case explicitly shows that there is no incriminating seized material for the relevant assessment year 2013-14.

8. Thus, in the light of undisputed facts and the law laid down by Hon'ble Jurisdictional High Court we find merit in ground No.1 raised in the Cross Objections. Consequently the Cross Objection of the assessee is allowed.

9. To sum up, appeal by the Revenue is dismissed and Cross Objection by the assessee is allowed.

Order pronounced in the open court on Monday the 13th day of June, 2022.

Sd/-

(GAGAN GOYAL)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 13/06/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai