

आयकर अपीलीय अधिकरण, कोलकाता
पीठ 'C'- एसएमसी, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C-SMC' BENCH, KOLKATA

समक्ष : श्री मनीष बोरड, लेखा सदस्य

Before : SRI MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील संख्या/ I.T.A. No. 262/कोल/2022

निर्धारण वर्ष/Assessment Year: 2017-18

Explore Sikkim Pvt. Ltd..... (अपीलार्थी)/Appellant
[PAN: AACCE 5049 G]

Vs.

ITO, Ward-3(1), Gangtok..... (प्रत्यर्थी)/Respondent

Appearances by:

Sh. Manish Tiwari, FCA, appeared on behalf of the Assessee.

Sh. Biswanath Das, CIT, D/R, appeared on behalf of the Revenue.

सुनवाई की तिथि/

Date of concluding the hearing : August 22nd, 2022

आदेश उद्घोषणा की तिथि/

Date of pronouncing the order : September 07th, 2022

आदेश/ORDER

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short ld. "CIT(A)"] dated 24.11.2021 arising out of the assessment order framed u/s 144 of the Act dated 28.11.2019.

2. Registry has informed that the appeal is time barred by 110 days. Condonation application has been filed by the assessee. Perusal of the same shows that the delay was on account of COVID-19 restrictions. We, therefore, in view of the judgment of The Hon'ble Supreme Court vide *Miscellaneous Application No. 21 of 2022* find that the limitation period in filing appeal between 15.03.2020 till 28.02.2022 has been excluded for calculating the limitation period. Since the period of limitation in the case of the assessee falls during this period, the same deserves to be extended and we, therefore, condone the delay of 110 days and admit the appeal for adjudication.

3. The assessee is in appeal before the Tribunal raising the following grounds:

“(1) That on the facts and in the circumstances of the case, Ld. CIT(A) erred in confirming the addition of Rs. 15,06,000/- on account of cash deposit made in the appellants Bank Account.

(2) That on the facts and in the circumstances of the case, Ld. CIT(A) erred in confirming the action of AO to treat the sum of Rs. 15,06,000/- as unexplained money u/s 69A read with section 115BBE of the Act.

(3) That the appellant craves leave to add, alter, adduce or amend any ground or grounds on or before the date of hearing of the appeal.”

4. Brief facts of the case as culled out from records are that the assessee is a private limited company. The return of income was not filed for the assessment year under appeal i.e 2017-18. Under the Operation Clean Money (OCM) the assessee's case was selected for scrutiny for substantial cash deposited in the bank account during the demonetisation period. The assessee was

issued various notices to file the return of income, but the assessee did not file the same. The ld.AO, thereafter, passed best judgment assessment, wherein with regard to the cash deposited at Rs.2,53,09,529/- before the demonetisation period business income @ 8% was estimated at Rs. 20,27,462/- and as regards the cash of Rs.15,06,000/- deposited during the demonetisation period, the same was treated as unexplained money u/s. 69A r.w.s 115BBE of the I.T Act, 1961. Income was assessed at Rs. 35,30,762/-.

5. Aggrieved, the assessee preferred an appeal before the ld. CIT(A) and partly succeeded. The ld. CIT(A) deleted the addition of estimated business profit at Rs.20,24,762/-. As regards remaining addition of Rs.15,06,000/-, the ld. CIT(A) confirmed the view taken by the ld. AO.

6. Aggrieved, the assessee is now in appeal before this Tribunal.

7. At the outset, the Ld. Counsel for the assessee submitted that the assessee did not get fair opportunity to make submissions and to explain the source of cash deposited of Rs. 15,06,000/-. It was also submitted that the assessee company commenced its operation in the month of March 2017 on a trial basis and two directors of the assessee company namely, Mr. Phigu Tshering Bhutia and Mrs. Chunba Bhutia both are Sikkimese as defined in section 10(26AAA) of the I.T Act, 1961 and the source of alleged cash deposit was from both these persons. It was further prayed that fair opportunity may be provided so that necessary documents/details can be filed before

the ld. AO to explain the source and genuineness of the alleged cash deposits of Rs. 15,06,000/-.

8. Per contra, the Ld. Departmental Representative vehemently argued supporting the order of the ld. CIT(A).

9. I have heard the rival contentions and perused the record placed before me. Before me the assessee has raised three grounds of appeal. Out of which ground no. 3 is general in nature and effective ground nos. 1 & 2 relate to addition made for unexplained cash deposit u/s. 69A r.w.s 115BBE of the Act at Rs. 15,06,000/-. The assessee company deposited cash on various occasions during the year. As far as cash deposited prior to demonetisation period, the ld. AO treated the same as estimated business income, which was subsequently deleted by the ld. CIT(A).

10. As far as cash sum of Rs.15,06,000/- deposited during the demonetisation period, the Ld. Counsel for the assessee contended that the sum was received from said two directors, who are Sikkimese resident as defined in section 10(26AAA) and request was made before me to restore the issue to the ld.AO for examining it afresh after giving due opportunity.

11. Further, the ld.DR though supported the orders of the lower authorities, but did not raise any objection if the issue raised in the instant appeal is restored to the file of the AO for examining the same afresh. On perusal of the record, I notice that during assessment proceedings the assessee requested to grant time till 09-12-2019 for preparation and submission of explanation for

the credits in the bank account. However, irrespective to the fact of request made by the assessee on 27-11-2019 for giving time upto 09-12-2019 the assessment order was passed immediately by the Id. AO on the very next day i.e on 28-11-2019. Therefore, under the given facts and circumstances of the case and in the interest of justice being fair enough to both the parties, I hereby restore the issue of unexplained cash deposit at Rs.15,06,000/- to the file of the Id.AO for examining it afresh in the light of the evidence(s), details and submissions to be furnished by the assessee after being provided proper opportunity of being heard.

12. In the result, the appeal of the assessee is allowed for statistical purpose.

परिणामतः निर्धारिती की अपील सांख्यिकी उद्देश्य से मंजूर की जाती है।

Order pronounced in the open court on...07-09-2022

आदेश खुले न्यायपीठ में दिनांक 07-09-2022 को उद्घोषित।

Sd/-

मनीष बोरड, लेखा सदस्य

[Manish Borad]

Accountant Member

दिनांक /Dated:07.09.2022

Copy of the order forwarded to:

1. *Explore Sikkim Pvt. Ltd., 42, Super Market Development Area, Gangtok (E), Sikkim-737 101.*
2. *ITO, Ward-3(1), Gangtok.*
3. *CIT(A)- NFAC, Delhi.*
4. *CIT-*
5. *CIT(DR), Kolkata Benches, Kolkata.*

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata