

आयकर अपीलीय अधिकरण, 'GAUHATI पीठ , कोलकाता

आभासी माध्यम से

IN THE INCOME TAX APPELLATE TRIBUNAL

GAUHATI BENCH

VIRTUAL HEARING AT KOLKATA

समक्ष : श्री राजपाल यादव, उपाध्यक्ष, कोलकाता क्षेत्र (एवं)
श्री मनीष बोरड, लेखा सदस्य

Before: SHRI RAJPAL YADAV, VICE PRESIDENT (KZ) and
SHRI MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं.य/ ITA No.139/GAU/2019 निर्धारण वर्ष/ Assessment Year:2013-14		
JUD CEMENTS LIMITED C/o Hanumanbux, Umadutt, Police Bazar, Shillong, Meghalaya- 793001	बनाम / V/s.	ACIT, Circle- Shillong, Aaykar Bhawan, M.G Road, Shillong, Meghalaya- 793001
PAN: AABOJ7312C		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	ShriJay Prakash Gupta, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri N.T Sherpa, JCIT, Ld.SR-DR
सुनवाई की तारीख/Date of Hearing	08-09-2022
घोषणा की तारीख/ Date of Pronouncement	19-09-2022

आदेश / O R D E R

PER MANISH BORAD, AM.

The present appeal has been preferred by the assessee against the order dated 31-01-2019 of the Ld. Commissioner of Income-tax (Appeals),

[hereinafter referred to as 'CIT(A)'], Shillong [hereinafter referred to as 'CIT(A)'] for the assessment year 2013-14.

2. The assessee has raised the following grounds:-

1. *That the learned C.LT. (Appeals) erred in law as well as on facts in confirming the addition of Rs.89,00,000/- made by the assessing officer on account of share application money.*
2. *That the learned C.LT. (Appeals) erred in law as well as on facts in confirming receipt of Rs.32,61,927/- as receipt not eligible for deduction under section 80 IE of the Income Tax Act 1961.*
3. *That the appellant craves leave to submit any other ground/s on or before the hearing of the appeal.*

3. Brief facts of the case as culled out from records are that the assessee is a limited company. It is engaged in the business of manufacturing of clinker and cement. Loss of Rs.12,84,55,691/- declared in the revised return filed on 30-11-2013 for the AY 2013-14. Original e-return was filed on 27-09-2013. Case selected for scrutiny under CASS followed by serving of notices issued u/s. 143(2) and 142(1) of the Act. After considering the submissions of the assessee the assessment was concluded on 06-02-2016 making various additions including addition u/s. 68 of the Act for unexplained share application money of Rs.89 lakhs and denial of deduction u/s. 80IE of the Act at Rs. 10,58,332/-.

4. Aggrieved, the assessee preferred an appeal before the Id. CIT(A) challenging the impugned additions made by the Id. AO, but partly succeeded.

5. Aggrieved, now the assessee is now in appeal before this Tribunal raising the aforementioned grounds of appeal.

6. At the outset, the Ld. Counsel for the assessee requested before us for not pressing ground no.2 challenging the finding of the Id. CIT(A) confirming the action of the Id.AO not allowing the deduction u/s. 80IE of the Act of Rs.32,61,927/-. Since this ground is not pressed by the assessee, we dismiss ground no. 2 raised by the assessee.

7. As regard to ground no. 1, the Ld. Counsel for the assessee vehemently argued referring to the submissions made before the lower authorities and paper book dt.8.11.2021 running into 42 pages containing various details. The Ld. Counsel for the assessee also submitted that as regards the addition of Rs.89 lakhs is concerned, Rs. 50 lakhs was not received during the year. It was received in preceding year as thus, no addition is called for and remaining amount of Rs. 39 lakhs is received from the director, Mr. Adarsh Kr. Jhunjhunwala through banking channel.

8. Per contra, the Ld. Departmental Representative vehemently argued supporting the orders of the lower authorities.

9. We have heard the rival contentions and perused the material placed before us. The sole grievance of the assessee is with regard to ground no. 1 challenging the addition of Rs. 89 lakhs made u/s. 68 of the Act for unexplained share application money.. We observe that in the balance sheet Rs.89 lakhs was shown as share application money pending for allotment in the name of Mr. Adarsh Kr. Jhunjhunwala. Further the Id. AO also observed that since it was not reflected in the books of Mr. Adarsh Kr. Jhunjhunwala, the same was unexplained. We, however, on perusal of the P/B and also the bank statement Mr. Adarsh Kr. Jhunjhunwala, notice that Mr. Adarsh Kr. Jhunjhunwala is the director as well as shareholder of the assessee company holding 16.54% equity shares. We also note that out of the alleged addition of Rs.89 lakhs, Rs. 50 lakhs was received on 25-07-2011 through account payee cheque of SBI from Mr. Adarsh Kr. Jhunjhunwala during FY 2011-12 relevant to AY 2012-13. Since this amount was not received during the year, the addition u/s. 68 of the Act for sum of Rs. 50 lakhs is uncalled for.

10. As far as remaining amount of Rs.39 lakhs is concerned, we notice that the assessee received the sum of Rs. 39 lakhs through banking channel. Identity and genuineness of the transaction could not be disputed as alleged

cash creditor, Mr. Adarsh Kr. Jhunjhunwala is director as well as shareholder of the assessee company. The creditworthiness is further proved from the fact that for issuing of cheque of SBI of Rs. 39 lakhs to the assessee company, Mr. Adarsh Kr. Jhunjhunwala took loan of Rs.41 lakhs from Sibren Sumer, resident of Meghalaya, which thus explains the source of share application money of Rs. 39 lakhs given to assessee company. Though the Id. DR has stated that documents were not filed before the lower authorities, we, however considering the fact that the alleged cash creditor, Mr. Adarsh Kr. Jhunjhunwala is a director/shareholder of the assessee company and bank statement clearly shows such transaction as well as source of fund used/utilized for the purpose of share application money, are of the view that the assessee has successfully/satisfactorily explained the source of sum of Rs.39 lacs and therefore, the addition made u/s. 68 of the Act is uncalled for. We, therefore, set aside the finding of Id. CIT(A) and delete the addition of Rs. 89 lakhs made u/s. 68 of the Act. Ground no. 1 of assessee's appeal is allowed.

11. Ground no. 3 is general in nature, which needs no adjudication.

12. In the result, the appeal of the assessee is partly allowed.

Order pronounced in open court on 19-09-2022
आदेश खुले न्यायपीठ में दिनांक 19-09-2022 को उद्घोषित।

Sd/-

(राजपाल यादव, उपाध्यक्ष)कोलकाता क्षेत्र(
(RAJPAL YADAV)
VICE PRESIDENT (KZ)

Sd/-

(मनीष बोरड, लेखा सदस्य)
(MANISH BORAD)
ACCOUNTANT MEMBER

Dated/दिनांक:-19/09/2022

Kolkata/ कोलकाता

**PP/Sr.PS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant- JUD CEMENTS LIMITED, C/o Hanumanbux, Umadutt, Police Bazar, Shillong, Meghalaya-793001.
2. प्रत्यर्थी/Respondent-ACIT, Circle-Shillong, Aaykar Bhawan, M.G Road, Shillong, Meghalaya-793001
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT, Guwahati
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, कोलकाता ।