

आयकर अपीलिय अधिकरण, कोलकाता पीठ “बी”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्यके समक्ष

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 124/Kol/2020
Assessment Year: 2009-10

Sunag Engineering Pvt. Ltd. (PAN: AAEC5 6105 M)	Vs.	DCIT, Circle-12, Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	10.11.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	17 .11.2022
For the Appellant/ निर्धारिती की ओर से	Shri Manish Tiwari, FCA
For the Respondent/ राजस्व की ओर से	Shri Sudipto Guha, CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-15, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 26.11.2019 for the AY 2009-10.

2. Issue raised in ground no. 1 is against the order of Ld. CIT(A) confirming the addition of Rs. 20,00,000/- as made by the AO on account of unexplained cash credit u/s 68 of the Act.

3. Facts in brief are that the case of the assessee was selected for scrutiny and statutory notices were duly issued and served upon the assessee. The return of income

was filed on 29.09.2009 declaring total income of Rs. 1,12,82,490/-. The AO during the course of assessment proceedings observed that the assessee has issued 20,000 shares to M/s Bimalnath Impex Pvt. Ltd. in A.Y. 2004-05 for a consideration of Rs. 20.00 lacs and accordingly issued notice u/s 133(6) to verify the genuineness of the said transactions which was replied by the said party stating that it did not have any transactions with the assessee during FY 2008-09 and did not hold any shares during the year. Similarly AO issued notice to M/s Sukant Management Pvt. Ltd. which had been issued 20,000 equity shares in A.Y. 2004-05 for a consideration of Rs. 20.00 lacs. The said party also denied that during the period it did not have any transaction with assessee vide order dated 15.11.2011. The AO observed that in para 2.3 that assessee had received Rs. 10 lacs from M/s Bimalnath Impex Pvt. Ltd. vide cheque no. 603895 on Union Bank of India which was received in FY 2003-04 as the investor had applied for 20,000 shares on 23.04.2003. Similarly in the case of M/s Sukant Management Pvt. Ltd., the party had applied on 25.04.2003 for 20000 shares by remitting Rs. 10,00,000/- vide cheque no. 609554 on Union Bank of India and scrutiny assessment was also completed in AY 2004-05 and this transaction was duly explained in that scrutiny assessment and no transaction was made during the year. However the AO rejected the contention of the assessee and added the same to the income of the assessee as unexplained cash credit u/s 68 of the Act.

4. The Ld. CIT(A) simply dismissed the appeal of the assessee by holding that the parties have denied the transaction with the assessee during the year and also denied to have hold any shares.

5. After hearing the rival parties and perusing the material on record, we find that the money has been received in FY 2003-04 and share was also allotted in that year which was subjected to scrutiny assessment and the transactions were accepted and no addition was made in the assessment framed. We note that though the investors have denied to have any transactions with the assessee and also stated that they did not hold any shares in the current year. On the basis of material available before us and

after perusing the order of AO and Ld. CIT(A), the undisputed culling out from the said orders are that the transactions had happened in FY 2003-04 and not during the year. In our opinion, since money had been received in FY 2003-04 it cannot be treated as cash credit received during the year. Accordingly the order of ld. CIT(A) is set aside on this issue and ground no. 1 is allowed.

6. Issue raised in ground no. 2 is against the order of Ld. CIT(A) setting aside the issue of addition of Rs. 87,20,433/- under the head income from other sources which actually relates to income of previous year.

7. The Ld. CIT(A) simply restored the matter to the AO to examine the add the correct amount of income under the head of other sources and assess accordingly. We note that the AO has wrongly taken the income of Rs. 87,20,433/- as income relating to financial year ended 31.03.2009 whereas the actual income for the year ended 31.03.2009 was 26,90,605/-. In our considered view the issue is required to be examined at the level of the AO and we direct the AO to verify the same and decide the same on the basis of facts and information after giving a reasonable opportunity of hearing to the assessee. Accordingly ground no. 2 is allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 17th November, 2022

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 17th November, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sunag Engineering Pvt. Ltd., Sukhsagar Apartment, 9th Floor, 9B, 2/5, Sarat Bose Road, Kolkata-700020.
2. Respondent – DCIT, Circle-12, Kolkata
3. Ld. CIT(A)-15, Kolkata (Sent through e-mail)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata