

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 2611/Kol/2019
Assessment Year: 2015-16

Sukhdham Infrastructures LLP (PAN: ABVFS 9809 D)	Vs.	ITO, Ward-40(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

I.T.A. No. 148/Kol/2020
Assessment Year: 2015-16

ACIT, Circle-40, Kolkata	Vs.	Sukhdham Infrastructures LLP (PAN: ABVFS 9809 D)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	21.12.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	23.02.2023
For the Appellant/ निर्धारिती की ओर से	Shri Manish Tiwari, FCA
For the Respondent/ राजस्व की ओर से	Shri Sudipta Guha, CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee and the cross- appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-12,

Kolkata (hereinafter referred to as the Ld. CIT(A)"] dated 07.11.2019 for the AY 2015-16.

2. First we shall adjudicate assessee's appeal in ITA No. 2611/Kol/2019 for AY 2015-16. The assessee has raised following grounds of appeal:

1. That on the facts and in the circumstances of the case and in law, the AO grossly erred in converting the limited scrutiny to complete scrutiny on 14.12.2017 even though the notices broadening the scrutiny beyond the scope of limited scrutiny were issued prior to 14.12.2017, which is bad in law and the entire proceedings under Section 143(3) of the Act is liable to be quashed.

2. a) That on the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in confirming the action of the AO in treating an aggregate sum of Rs. 80,00,000/- i.e. (Rs. 15,00,000/- from Varmita Developers (wrongly mentioned as 25,00,000/-) + Rs. 25,00,000/- from Oversure Vincom Pvt. Ltd. + Rs. 40,00,000/- from Silvertoss Vanijya Pvt. Ltd.) received as loan as unexplained cash credit under section 68 of the Act which is erroneous, arbitrary and bad in law.

b) That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the action of AO and concluded that the assessee has failed to prove identity, genuineness and creditworthiness in respect of the three parties when all the corroborating evidences were placed on record.

3. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the action of AO with respect to the addition of Rs. 42,747/- being 20% of the gardening expenses incurred by the appellant.

4. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the action of AO with respect to the addition of Rs. 70,262/- being 20% of the administrative expenses incurred by the appellant.

5. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the action of AO with respect to the addition of Rs. 42,193/- being interest on TDS, income tax and service tax.

6. That the appellant craves leave to add, alter, adduce or amend any ground on or at the time of hearing of the appeal.

3. Issue raised in ground no. 1 is a legal issue challenging the order of Ld. CIT(A) upholding the assessment framed by the AO wherein the AO has completed the assessment on the basis of complete scrutiny on 14.12.2017 whereas the notices calling for details and information from the assessee were issued prior to the date on which the approval for complete scrutiny was given under the Act.

4. Facts in brief are that the assessee filed return of income on 26.08.2015 disclosing total income of Rs. 2,18,390/-. The case of the assessee was selected for scrutiny under the CASS under the category of limited scrutiny. The statutory notices were duly issued and served upon the assessee. In the notice issued u/s 143(2) for limited scrutiny, there were four issues stated/covered namely i) Interest expenses, ii) Income from Real Estate Business, iii) Sales Turnover mismatch and iv) Other expenses claimed in the profit and loss a/c. However, the AO issued notice u/s 142(1) of the Act dated 20.02.2017 calling for information and details as required for secured & unsecured loans/deposits beside calling for the details. The assessee duly complied with the notices issued by the AO by filing the details/ evidences, complete books of accounts, audited accounts etc as desired by the AO. The AO converted the limited scrutiny into complete scrutiny on 14.12.2017 whereas the notices were issued by the AO on the issues beyond the scope of limited scrutiny priority on 14.12.2017 and finally the assessment was framed vide order dated 28.12.2017 u/s 143(3) of the Act just two days before the assessment was getting time barred.

5. The assessee challenged this legal issue before the Ld. CIT(A) that the AO has exceeded the jurisdiction in enquiring into the issues relating to unsecured loans even before prior to 14.12.2017 when the case was converted into complete scrutiny which is against the provisions of Act. The Ld. CIT(A) noted these facts in para 4 of the appellate order however no clear-cut findings were given on this issue while the addition was deleted on merit. The Ld. CIT(A) noted in this order that assessee had objected to conduct of broad enquiries covering loan creditors prior to 14.12.2017 which was selected for limited scrutiny on the issues other than the loan creditors. The

Ld. CIT(A) noted that post 14.12.2017 limited scrutiny were converted into complete scrutiny and thus the AO has exceeded jurisdiction by calling for details and carrying out enquiries qua loan creditors even much before 14.12.2017. The Ld. CIT(A) duly recorded in the appellate order and admitted that the AO issued requisitions and notice as if he was in a proceedings of complete scrutiny even though it was a limited scrutiny. The relevant finding has extracted below:

“5. I have perused the Remand Report, various submissions of the appellant and the assessment folder. As regards the scrutiny alleged to have been conducted beyond the scope of limited scrutiny, I do see that the AO issued requisitions and notices as if he was in a proceeding of complete scrutiny even though it was a limited scrutiny case. Consequent to an information/ report dated 10.10.2017 from I & CI Unit, Kanpur received in the AO’s folder on 2nd November, 2017, the AO converted it formally into complete scrutiny only on 14th December, even though he had already issued (earlier on 26th July, 2017 and later) notices broadening the scrutiny beyond the scope of limited scrutiny.”

So it is clear from the above extract that the Ld. CIT(A) has not given any finding despite appreciating that the AO has exceeded jurisdiction.

6. The Ld. A.R. vehemently submitted before the Bench that the order passed by the AO is void and nullity in the eyes of law on the ground that the AO has exceeded the jurisdiction by enquiring into those issues which were not covered in the limited scrutiny in terms of the notice issued u/s 143(2) of the Act dated 28.07.2016. The Ld. Counsel also drew our attention to the notice issued u/s 142(1) dated 20.02.2017 wherein the AO called for information from the assessee in respect of secured & unsecured loan deposits which were also furnished despite the fact that he AO had no valid jurisdiction or power to call for the information under the limited scrutiny. The Ld. A.R. submitted that the AO has converted the limited scrutiny into a broad scrutiny only on 14.12.2017 whereas the enquiry was made qua the loans much prior to that date thereby rendering the assessment as nullity which deserved to be quashed on this score alone. The Ld. A.R referred to the instruction NO. 5/2016 of CBDT dated 14.07.2016 taking the bench through the procedure to be followed for conversion into complete scrutiny in a case which was originally earmarked for limited scrutiny. The ld AR contended that the AO was required to make a reasonable

view that there was a possibility of under-assessment of income if the case was not examined under complete scrutiny. The Id. A.R has referred to para 3 of the instruction which says that while forming the reasonable view the AO would ensure that there exists credible material or information available on record for forming such view and this reasonable view should not be based on mere suspicion, conjecture or unreliable source and there must be a direct nexus between the available material and formation of such view. The Ld. A.R. therefore prayed that the order passed by the AO is bad in law and may kindly be quashed. In defense of his arguments the Ld. A.R. relied on the decision of the Co-ordinate Bench of Chandigarh in the case of Shri Vijay Kumar vs. ITO in ITA No. 434/Chad/2019 for AY 2014-15 dated 12.09.2019 and the decision of Co-ordinate Bench of Delhi in the case of Dev Milk Foods Pvt. Ltd. vs. Addl. CIT in ITA No. 6767/Del/2019 for AY 2015-16 dated 12.06.2020. The Ld. A.R submitted that in view of the decisions as referred to above the assessment framed by the AO is bad in law and may kindly be quashed.

7. The Ld. D.R on the other hand relied heavily on the order of authorities below by submitting that though the notice was issued u/s 142(1) of the Act dated 20.02.2017 calling for information in respect of secured and unsecured loans while admitting that the case was converted into complete scrutiny on 14.12.2017. The Id. D.R submitted that what is required during the assessment proceedings converting the limited scrutiny into complete scrutiny was duly done by the AO and therefore the arguments of the AO has nor force and the appeal of the assessee may kindly be dismissed on this legal issue.

8. After hearing the rival contentions and perusing the material on record, and also notice dated 143(2) dated 28.07.2016 issued for limited scrutiny covering four issues namely) Interest expenses, ii) Income from Real Estate Business, iii) Sales Turnover mismatch and iv) Other expenses claimed in the profit and loss a/c and also subsequent notice issued u/s 142(1) dated 20.02.2017 called for information on secured and unsecured loan deposits, we find that there is no dispute that even prior to

conversion of limited scrutiny to complete scrutiny on 14.12.2017 the AO has started enquiries during the year even prior to that date which is evident from the notice dated 20.02.2017 wherein the information/details were called for qua secured and unsecured loans. Thus this is not in dispute that though the limited scrutiny was converted into complete scrutiny on 14.12.2017 and order was passed on 20.12.2017 whereas the issue in respect of secured and unsecured loans were enquired and examined by the AO much prior to that date. In our view this is incomplete disregard of the Instruction No. 5/2016 issued by CBDT on 14.07.2016 which provides that while proposing to take up complete scrutiny which was fixed for limited scrutiny, the AO shall form a reasonable view that there is a possibility of under-assessment of income if the case is not examined under complete scrutiny and that plea has to be on the existence of the credible material not merely on suspicion and conjecture or unreliable sources. We note that the instruction provide that there has to be a direct nexus between the available material and formation of such view. The relevant part of the instruction are reproduced as under:

2. In order to ensure that maximum objectivity is maintained in converting a case falling under Limited Scrutiny' into a 'Complete Scrutiny' case, the matter has been further examined and in partial modification to Para 3(d) of the earlier order dated 29.12.2015, Board hereby lays down that while proposing to take up 'Complete Scrutiny' in a case which was originally earmarked for 'Limited Scrutiny', the Assessing Officer ('AO') shall be required to form a reasonable view that there is possibility of under assessment of income if the case is not examined under 'Complete Scrutiny'. In this regard, the monetary limits and requirement of administrative approval from Pr. CIT/CIT/Pr. DIT/DIT, as prescribed in Para 3(d) of earlier Instruction dated 29.12.2015, shall continue to remain applicable.

3. Further, while forming the reasonable view, the Assessing Officer would ensure that:

a. there exists credible material or information available on record for forming such view;

b. this reasonable view should not be based on mere suspicion, conjecture or unreliable source; and

c. there must be a direct nexus between the available material and formation of such view.

4. It is further clarified that in cases under 'Limited Scrutiny', the scrutiny assessment proceedings would initially be confined only to issues under 'Limited Scrutiny' and questionnaires, enquiry, investigation etc. would be restricted to such issues. Only upon

I.T.A. No. 2611/Kol/2019
I.T.A No. 148/Kol/2020
Assessment Year: 2015-16
Sukhdham Infrastructures LLP

*conversion of case to 'Complete * Scrutiny' after following the procedure outlined above, the AO may examine the additional issues besides the issue(s) involved in 'Limited Scrutiny'. The AO shall also expeditiously intimate the taxpayer concerned regarding conducting 'Complete Scrutiny' in such cases.*

Instruction no. 4 provides only complete scrutiny after following the procedure laid down above and the AO may examine the additional issues besides the issue involved in limited scrutiny and AO shall also expeditiously conducted complete scrutiny in such cases. We note that in the present case there has been a complete violation of the Circular issued by the CBDT. The case of the assessee finds support from the decision of Co-ordinate Bench of Delhi in the case of Dev Milk Foods Pvt. Ltd. (supra) wherein it has been held as under:

6.0 We have heard the rival submissions and have also perused the material on record. After considering the entire factual matrix we first deal with the primary arguments of the Ld. Authorized Representative that the conversion of the case from limited scrutiny to complete scrutiny was not legally valid. The subject of conversion of case from limited scrutiny to complete scrutiny has been dealt with in CBDT Instruction No.5/2016 which is being reproduced herein under for the sake of convenience:

"2. In order to ensure that maximum objectivity is maintained in converting a case falling under 'Limited Scrutiny' into a 'Complete Scrutiny' case, the matter has been further examined and in partial modification to Para 3(d) of the earlier order dated 29.12.2015, Board hereby lays down that while proposing to take up 'Complete Scrutiny' in a case which was originally earmarked for 'Limited Scrutiny', the Assessing Officer ('AO') shall be required to form a reasonable view that there is possibility of under assessment of income if the case is not examined under 'Complete Scrutiny'. In this regard, the monetary limits and requirement of administrative approval from Pr. CIT/CIT/Pr. DIT/DIT, as prescribed in Para 3(d) of earlier Instruction dated 29.12.2015, shall continue to remain applicable.

3. Further, while forming the reasonable view, the Assessing Officer would ensure that:

- a. there exists credible material or information available on record for forming such view;*
- b. this reasonable view should not be based on mere suspicion, conjecture or unreliable source; and*
- c. there must be a direct nexus between the available material and formation of such view.*

6. To ensure proper monitoring in cases which have been converted from 'Limited Scrutiny' to 'Complete Scrutiny', it is suggested, that provisions of section 144A of the Act may be invoked in suitable cases. To prevent possibility of fishing and roving enquiries in such cases, it is desirable that these cases should invariably be picked up while conducting Review or Inspection by the administrative authorities.

I.T.A. No. 2611/Kol/2019
I.T.A No. 148/Kol/2020
Assessment Year: 2015-16
Sukhdham Infrastructures LLP

7. The above Instruction shall be applicable from the date of its issue and would cover the cases selected under CASS 2015 which are pending scrutiny cases as well as cases selected/being selected under the CASS 2016.”

6.1 Earlier preceding instruction in this regard was 20/2015 which states as under:

“Instruction No. 20/2015

Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

North Block, New Delhi, the 29th of December, 2015

Subject: Scrutiny Assessments-some important issues and scope of scrutiny in cases selected through Computer Aided Scrutiny Selection ('CASS')-reg .-

The Central Board of Direct Taxes ('CBDT'), vide Instruction No. 7/2014 dated 26.09.2014 had clarified the extent of enquiry in certain category of cases specified therein, which are selected for scrutiny through CASS. Further clarifications have been sought regarding the scope and applicability of the aforesaid Instruction to cases being scrutinized.

2. In order to facilitate the conduct of scrutiny assessments and to bring further clarity on some of the issues emerging from the aforesaid Instruction, following clarifications are being made.

i Year of applicability : As stated in the Instruction No. 7/2014 , the said Instruction is applicable only in respect of the cases selected for scrutiny through CASS-2014

ii Whether the said Instruction is applicable to all cases selected under CASS :

The said Instruction is applicable where the case is selected for scrutiny under CASS only on the parameter(s) of AIR/CIB/26AS data . If a case has been selected under CASS for any other reason(s)/parameter (s) besides the AIR /CIB/26AS data, then the said Instruction would not apply.

iii Scope of Enquiry : Specific issue based enquiry is to be conducted only in those scrutiny cases which have been selected on the parameter(s) of AIR/CIB/26AS data .In such cases, the Assessing Officer, shall also confine the Questionnaire only to the specific issues pertaining to AIR/CIB/26AS data. Wider scrutiny in these cases can only be conducted as per the guidelines and procedures stated in Instruction No. 7/2014.

iv Reason for selection: In cases under scrutiny for verification of AIR/CIB/26AS data , the Assessing Officer has to intimate the reason for selection of case for scrutiny to the assessee concerned.

3. As far as the returns selected for scrutiny through CASS-2015 are concerned, two type of cases have been selected for scrutiny in the current Financial Year - one is 'Limited Scrutiny' and other is Complete Scrutiny'. The assessee concerned have duly been intimated about their cases falling either in 'Limited Scrutiny' or 'Complete Scrutiny' through notices issued under section 143(2) of the Income-tax Act, 1961 ('Act'). The procedure for handling 'Limited Scrutiny' cases shall be as under:

a. In 'Limited Scrutiny' cases, the reasons/issues shall be forthwith communicated to the assessee concerned.

b. The Questionnaire under section 142(1) of the Act in 'Limited Scrutiny' cases shall remain confined only to the specific reasons/issues for which case has been picked up for scrutiny. Further, the scope of enquiry shall be restricted to the 'Limited Scrutiny' issues.

c. These cases shall be completed expeditiously in a limited number of hearings.

d. During the course of assessment proceedings in 'Limited Scrutiny' cases, if it comes to the notice of the Assessing Officer that there is potential escapement of income exceeding Rs. five lakhs (for metro charges, the monetary limit shall be Rs. ten lakhs) requiring substantial verification on any other issue(s), then, the case may be taken up for 'Complete Scrutiny' with the approval of the Pr. CIT/CIT concerned. However, such an approval shall be accorded by the Pr. CIT/CIT in writing after being satisfied about merits of the issue(s) necessitating 'Complete Scrutiny' in that particular case. Such cases shall be monitored by the Range Head concerned. The procedure indicated at points (a), (b) and (c) above shall no longer remain binding in such cases. (For the present purpose, 'Metro charges' would mean Delhi, Mumbai, Chennai, Kolkata, Bengaluru, Hyderabad and Ahmedabad).

4. The Board further desires that in all cases under scrutiny, where the Assessing Officer proposes to make additions or disallowances, the assessee would be given a fair opportunity to explain his position on the proposed additions/disallowances in accordance with the principle of natural justice. In this regard, the Assessing Officer shall issue an appropriate show-cause notice duly indicating the reasons for the proposed additions/disallowances along with necessary evidences/ reasons forming the basis of the same. Before passing the final order against the proposed additions/disallowances due consideration shall be given to the submissions made by the assessee in response to the show cause notice.

5. The contents of this Instruction should be immediately brought to the notice of all concerned for strict compliance.

6. Hindi version to follow."

6.2 We have also gone through the CBDT letter bearing No. DGITVIF/HQ SI/2017-18 dated 30.11.2017 which states that the idea behind such stipulation was to enforce checks and balances upon the power of the Assessing Officer to do fishing and roving enquiries in cases selected for limited scrutiny etc. In this very letter, the CBDT has also highlighted the aspect of cryptic order sheet entries which according to the CBDT shows irresponsible, ad hoc and indisciplined working of an Officer of the Department. A perusal of the aforesaid instructions would show that the objective

behind the issuance of these instructions is (i) to prevent possibility of fishing and roving enquiries; (ii) ensure maximum objectivity; and (iii) to enforce checks and balances upon the powers of an Assessing Officer.

6.3 We have also gone through the proposal drafted by the Assessing Officer on 05.10.2017 for converting the case from limited scrutiny to complete scrutiny. This reads as under:

“....4. In this regard it may be mentioned here that the assessee has shown a short term capital loss on sale of shares purchased on 09.07.2014 and sold on 15.02.2015 . The purchase price of the shares has been stated at Rs 499,98,440 and sale price has been mentioned at Rs 79,03,676. The resultant loss of Rs 420,94,764 has been set off by the assessee against long term capital gains. This transaction appears to be suspicious in nature and probably this loss has been created to reduce the incidence of tax on long term capital gains discussed in para 3. This issue needs to be thoroughly examined to ascertain the genuineness of this loss”

6.4 We have also through the original order sheet entries, as were present in the assessment records and which had been submitted for our perusal by the Ld. Sr. Departmental Representative under our directions and it shows that there is not an iota of any cogent material mentioned by the Assessing Officer which enabled him to have reached the conclusion that this case was a fit case for conversion from limited scrutiny to complete scrutiny. We have also gone through the statement of assessee's Director Mr. Rohit Verma which was recorded on 18.07.2017 i.e., after the conversion of the case and even in his statement nothing adverse is coming out vis. a vis. the impugned transactions. If the proposal of the Assessing Officer dated 05.10.2017 and the approval of the Ld. Pr. Commissioner of Income Tax dated 10.10.2017 are examined on the anvil of paragraph 3 of CBDT Instruction No.5/2016, it is very much clear that no reasonable view is formed as mandated in the said CBDT Instruction No.5/2016 in an objective manner and secondly merely suspicion and inference is the foundation of the view of the Assessing Officer. We also note that there is no direct nexus brought on record by the Assessing Officer in the said proposal and, therefore, it is very much apparent that the proposal of converting the limited scrutiny to complete scrutiny aimed at making fishing enquiries. We also note that the Ld. Pr. Commissioner of Income Tax has accorded the approval in a mere mechanical manner which is in clear violation of the CBDT Instructions No.20/2015.

6.5 The Hon'ble Calcutta High Court in the case of Amal Kumar Ghosh reported in 361 ITR 458 (Cal.) discussed the purpose behind the CBDT Circulars. The relevant observations of the Hon'ble Calcutta High Court are as under:

“.....Mrs. Gutgutia, learned Advocate submitted that the circulars are not meant for the purpose of permitting the unscrupulous assesseees from evading tax. Even assuming, that to be so, it cannot be said that the department, which is State, can be permitted to selectively apply the standards set by themselves for their own conduct. If this type of deviation is permitted, the consequences will be that floodgate of corruption will be opened which it is not desirable to encourage. When the department has set down a standard for itself, the department is bound by that standard and cannot act with discrimination. In

case, it does that, the act of the department is bound to be struck down under Article 14 of the Constitution. In the facts of the case, it is not necessary for us to decide whether the intention of CBDT was to restrict the period of issuance of notice from the date of filing the return laid down under section 143(2) of the I.T. Act.”

6.6 The Co-ordinate bench of ITAT at Chandigarh in the case of Paya Kumari in ITA No.23/Chd/2011, vide order dated 24.02.2011, has held that even Section 292 BB of the Act cannot save the infirmity arising from infraction of CBDT Instructions dealing with the subject of scrutiny assessments where assessment has been framed in direct conflict with the guidelines issued by the CBDT.

6.7 Therefore, on an overall view of the factual matrix as well as settled judicial position, we are of the considered opinion that the instant conversion of the case from limited scrutiny to complete scrutiny cannot be upheld as the same is found to be in total violation of CBDT Instructions No.5/2016. Accordingly, it is our considered opinion that the entire assessment proceedings do not have any feet to stand on. Therefore, we hold the assessment order to be nullity and we quash the same.”

9. Similarly the Co-ordinate Bench of Chandigarh in the case of Shri Vijay Kumar (supra) wherein it has been held as under:

“3. The main contention of the Ld. Counsel for the assessee is that the Assessing Officer while making the impugned additions has exceeded his jurisdiction. That the case of the assessee was selected for limited scrutiny issue i.e. regarding security transaction. The Assessing Officer could not find any reason to make any addition in respect of issue for which the limited scrutiny was done. However, the Assessing officer made the certain other additions for which the Assessing Officer did not have any jurisdiction.

4. The Ld. D.R has been fair enough to admit that the impugned additions have been made by the Assessing Officer on certain other issues, whereas, the case of the assessee was selected for the purpose of limited scrutiny relating to security transactions.”

Considering the facts of the assessee’s case and also the ratio laid down drawn in the above decisions and also the CBDT Instruction No. 5/2016, we are of the considered view that the AO has exceeded his jurisdiction in enquiring into those issues beyond the scope of limited scrutiny even prior to the date of conversion which is in clear violation of mandate given by CBDT in the said Circular and has been held by the Co-ordinate Bench of Delhi in the case of Dev Milk Foods Pvt. Ltd. (supra) to be bad in law. We note that CBDT has in para 4 of the said instruction clarified that in a limited scrutiny, the scrutiny assessment proceedings would initially be confined only to issues and questionnaire, enquiry, investigation etc. would be restricted to such issues in the limited scrutiny. Only upon conversion of such case to complete scrutiny

after following the procedure laid down as stated , the AO may examine the issues other than the issues involved in the limited scrutiny but in the present case the procedures were not followed and assessment was conducted in violation of this Instruction. In our opinion, the order passed by the AO is bad in law and cannot be sustained for the said reason. Accordingly we quash the assessment order as nullity and bad in law. Issue raised by the assessee in ground no. 1 is allowed.

10. The other issues raised on merit by the assessee are not adjudicated as the appeal of the assessee is allowed on legal issues and thus ground becomes academic in nature.

11. The appeal of the revenue in ITA NO. 148/Kol/2020 for AY 2015-16 also becomes infructuous and is dismissed accordingly.

12. In the result, the appeal of the assessee is allowed and the appeal of the revenue is dismissed.

Order is pronounced in the open court on 23rd February, 2023

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

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

Dated: 23rd February, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sukhdham Infrastructures LLP, 14, Princep Street, 4th Floor, Kolkata-700072.
2. Respondent – ITO, Ward-40(2), Kolkata

I.T.A. No. 2611/Kol/2019
I.T.A No. 148/Kol/2020
Assessment Year: 2015-16
Sukhdham Infrastructures LLP

ACIT, Circle-40, Kolkata

3. Ld. CIT(A)-12, 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