

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA

**BEFORE SHRI SAJNAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.596/Kol/2020
Assessment Year: 2011-12**

Income Tax Officer, Ward-13(1), Kolkata.	Vs.	Westwind Trading Pvt. Ltd. 1 st floor, Room No. FF/2E, 22, Rabindra Sarani, Kolkata-700073. (PAN: AAACW6971B)
(Appellant)		(Respondent)

Present for:

Appellant by : Shri A. K. Tibrewal, FCA
Respondent by : Shri Vijay Kumar, Addl. CIT

Date of Hearing : 09.02.2023
Date of Pronouncement : 29.03.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the revenue is against the order of Ld. CIT(A)-5, Kolkata vide Appeal No. 730/CIT(A)-5/Wd-13(4)/2018-19 dated 18.09.2020 passed against the order of ITO, Ward-13(4), Kolkata u/s. 147/143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 29.12.2018.


2. The solitary ground taken by the revenue is in respect of deletion of addition made u/s. 68 of the Act on account of unexplained cash credit for Rs.46,50,000/-.

3. Registry has noted that appeal is barred by limitation by 637 days. However, from perusal of the records, we find that the

impugned order of Ld. CIT(A) is dated 18.09.2020. The present appeal before the Tribunal was filed on 20.05.2020. Considering these two dates there is a delay of eight days in filing the appeal and not 637 days as pointed out by registry. We find that in the appeal Memo in Form 36 the date of order and communication of the same has been mentioned in respect of the assessment order and, therefore, registry has calculated the delay of 637 days. We find that the delay of eight days in the present appeal falls during the period of Pandemic of Covid 19 which has been excluded by the Hon'ble Supreme Court in the case of *suo moto* Writ Petition (C) No. 3 of 2020 dated 10.01.2022 by which the period from 15.03.2020 to 28.02.2022 has been directed to be excluded for the purpose of limitation. Vide this order a further period of 90 days has been granted for providing the limitation from 01.03.2022. Accordingly, we condone the delay and proceed to admit the appeal for hearing.

4. The present appeal of the revenue is covered by the Circular of CBDT No. 17/2019 dated 08.08.2019 and CBDT OM No. 279/Misc/M-93/2018-ITJ(Pt.) dated 16.09.2019, according to which where the tax effect is below the threshold limit of Rs. 50 lakh the appeals by the revenue shall be withdrawn. In the present case before us the tax effect as stated in Form 36 is of Rs.16,30,000/- and, therefore is covered by the said CBDT Circular No. 17/2019 dated 08.08.2019. However, Ld. Sr. DR had raised an objection stating that issues relating to the ground of appeal taken in the present case falls under the exception clause contained in the said CBDT circular and, therefore, has to be heard on merit. To this effect, a report was called from the Ld. AO to make a submission as to how the present appeal is covered under the exception clause contained in the CBDT circular.

4.1. Ld. Sr. DR placed a copy of the said report dated 14.11.2022 which is extracted below:

	<p>आयकर अधिकारी का कार्यालय, वार्ड-13(1), कोलकाता OFFICE OF THE INCOME TAX OFFICER, WARD-13(1), KOLKATA प्रत्यक्ष कर क्षेत्रीय प्रशिक्षण अकादमी DTRTI 110, शांतिपल्ली, 7 वां तल्ला, कमरा सं.-711, ई. एम. बाईपास, कोलकाता-700107. 110, SHANTIPALLY, 7TH FLOOR, R. NO--711, E.M. BYEPASS, KOLKATA-700107. e-mail : kolkata.ito13.1@incometax.gov.in</p>
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F.No. ITO/W-13(1) Kol/Westwind /2022-23/ 246

dated: 14.11.2022

To

The Addl. CIT, Sr. Dr.,

ITAT, Kolkata

Sir/ Madam

(Through Addl. CIT, R-13, Kolkata)

Sub.: Sending of Report in the case of M/s Westwind Trading (P) Ltd. (PAN: AAACW 6971 B)
For the Asst. Yr. 2011-12 of Appeal ITA No.596/ Kol/ 2020 – Matter regd.

Reg.: Your letter bearing no. SRDR/ ITAT/ ITA No.599/ Kol./ 2020/ 2022-23/ 1575
dated: 09.11.2022 received to this office on 11.11.2022

Kindly refer to the above.

It is observed from the assessment records that the case in respect of M/s Westwind Trading (P) Ltd. (PAN: AAACW 6971 B) was completed u/s 147/ 143(3) of the Income Tax Act, 1961, for the AY 2011-12, on 29.12.2018, by the then AO, on an assessed income of Rs.73,33,410 /-. The addition amounting to Rs.46,50,000/- was made u/s 68 of the Income Tax Act, 1961 treating unexplained cash credit and disallowance of Rs.6,25,000/- was made u/s14A read with Rule – 8D of the Income Tax Act, 1961. The assessee preferred appeal before the Ld.CIT(A) who passed the order in favour of the assessee.

Revenue has filed appeal before the Hon'ble ITAT, Kolkata against the order of the Ld.CIT(A) on 24.11.2020. As per the Form No.36, the tax effect in the matter is Rs.16,30,000/-. As per the monetary limit fixed by the CBDT vide Circular No.17/2019 dated 08.08.2019 and CBDT's OM No.279/Misc/M-93/2018-ITJ(Pt.) dated 16.09.2019, the issues involving bogus Long-Term Capital Gain(LTCG)/ Short Term Capital Loss(STCL) on penny stocks fall under exception clause. The issue involved in this case is unaccounted fund receipt treated as unexplained cash credit and disallowance u/s14A read with Rule – 8D of the Income Tax Act, 1961 which seems to be not covered under the exception clause of the abovementioned circular and OM issued by CBDT. The undersigned is also not in knowledge of any other circular/notification/OM issued by the CBDT in which the said issue of share application money/excessive share premium receipt is covered.

Also, it is pertinent to mention here that the Ld. Pr.CIT-5, Kolkata has approved the grounds of appeal in the instant case on the basis of involvement of substantial question of law with reference to the decision of Apex Court in the case of PCIT vs. NRA Iron & Steel Pvt. Ltd. [2019][TS-106-SC-2019](SC).

Submitted for your kind information and necessary directions, if any.

Yours faithfully,



[आनंद कुमार संत/Anand Kumar Sant]

ITO, Ward-13(1), कोलकाता/KOLKATA

(Contd. to next page)

5. From the perusal of the above report, Ld. AO has explicitly stated that *“the issue involved in this case is unaccounted fund receipt treated as unexplained cash credit and disallowance u/s. 14A read with Rule 8D of the Income Tax Rules, 1961 which seems to be not covered under the exception clause of the abovementioned circular and OM issued by CBDT. The undersigned is also not in knowledge of any other circular/notification/OM issued by the CBDT in which the said issue of share application money/excessive share premium receipt is covered.”*

6. Considering the above report from the Ld. AO who has explicitly stated that the issue is not covered under the exception clause of the CBDT circular and OM, the present appeal is covered by the CBDT circular and is accordingly dismissed.

7. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 29th March, 2023.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 29th March, 2023

JD, Sr. P.S.

Copy to:

The Appellant:

1. Appellant:
 2. The Respondent:
 3. CIT(A)-5, Kolkata
 4. CIT, Kolkata.
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata