

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 270/Mum/2023
(Assessment Year: 2013-14)

Dy. CIT, Central Circle-2(1) Mumbai	Vs.	M/s. Goldmedal Electricals Pvt. Ltd. 303, Wing-A, Kemp Plaza, Off Link Road, Mindspace, NR Inorbit Mall, Malad (W), Mumbai
PAN/GIR No. AACCG 9397 F		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Karan Jain
Revenue by	:	Shri Parekh Deshpande
Date of Hearing	:	24.04.2023
Date of Pronouncement	:	27.04.2023

ORDER

Per Kavitha Rajagopal, JM:

This appeal has been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) ('ld.CIT(A) for short)-48, Mumbai dated 21.11.2022 passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2013-14.

2. Briefly stated the assessee is a private limited company and had filed its return of income for the impugned year dated 30.09.2013 declaring total income at Rs.63,65,580/-. The assessee's case was reopened based on the information received from the search action carried out in the case of G M Group and Goldmedal Group dated 13.11.2019 and the assessment order u/s. 143(3) r.w.s. 147 of the Act dated 20.04.2021 was passed by the

Assessing Officer (A.O. for short) determining the total income at Rs.1,13,78,350/- by making an addition of Rs.50 lacs as bogus loan u/s. 68 of the Act taken from M/s. Green Velly Gems Pvt. Ltd. and an addition of Rs.12,500/- on account of alleged commission paid for the said unsecured loan along with the penalty and interest.

3. Aggrieved, the assessee was in appeal before the Id. CIT(A), challenging the addition made by the A.O.

4. The Id. CIT(A) held that the assessment order passed u/s. 147 of the Act lacked jurisdiction and that the same ought to have been passed u/s. 153A of the Act. The Id. CIT(A) deleted the impugned addition made by the A.O. on the ground that the assessment order was held to be void-ab-initio.

5. The Revenue is in appeal before us, challenging the order of the Id. CIT(A).

6. The learned Authorised Representative (Id. AR for short) for the assessee contended that the tax effect in the said appeal was Rs.16,26,306/- which is said to be covered under the low tax monetary limit of Rs.50 lacs prescribed by the CBDT vide Circular No. 17/2019 dated 08.08.2019 for the purpose of filing appeals before the Tribunal by the Revenue.

7. The learned Departmental Representative (Id. DR for short) for the Revenue had nothing to controvert the said fact and had stated that the assessee's case will not fall under the exception to clause (e) of para 10 of the CBDT Circular.

8. Having heard the rival submissions and perused the materials on record. It is evident that the addition of Rs.50 lacs on unsecured loan u/s. 68 of the Act was made by the A.O. and the same stands deleted by the ld. CIT(A) on the ground that the assessment order ought to have been passed u/s. 153A of the Act instead of section 147 of the Act. The assessee has relied on the CBDT Circular No. 17/2019 dated 08.08.2019 which prescribes the monetary limit of Rs.50 lacs and above for the Revenue to file an appeal before the tribunal against the order of the Commissioner (Appeals). The assessee's case was reopened based on the information received from the Investigation Wing which is not an external source and the assessee contends that the assessee's case was not covered by the exception mentioned in clause (e) of para 10 of the CBDT Circular. As the search was carried out in the assessee's case based on the information received by the A.O. from the same Investigation Wing, Mumbai which had carried out the search action on the assessee, the source of the information received by the A.O. was not from external law enforcement agencies and for the same reason the assessee would not fall under the exception specified in CBDT Circular. The assessee relied on the decision of co-ordinate bench in the case of *S.H.M. Products Pvt. Ltd.* in ITA No. 2098/Mum/2022 vide order dated 29.12.2022. It is observed that the ld. DR has not controverted the said facts stated by the assessee in its written submission dated 21.04.2023.

9. Hence, by respectfully following the above mentioned decision of the co-ordinate bench, we hereby dismiss the appeal of the Revenue on monetary limit prescribed by the CBDT with a liberty given to the Revenue to restore the appeal if in case the Revenue is

able to substantiate that the assessee's case would fall under the exception mentioned in clause (e) of para 10 of the CBDT Circular.

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 27.04.2023

Sd/-

Sd/-

(Om Prakash Kant)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 27.04.2023
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai