

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: H: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.1095/Del/2021
Assessment Year: 2011-12

ITO, Ward-24(1), New Delhi	vs.	M/s Soumya Tradecom Pvt. Ltd., (Erst. Soumya Infratech (P) Ltd.,) Room No. 91, Devika Tower, Nehru Place, South Delhi, Delhi 110019 PAN AALCS 1040 G
(Appellant)		(Respondent)

For Assessee :	Shri Sunil Kuamr Gupta, CA
Revenue For :	Shri Raghunath, Sr. DR

Date of Hearing :	04.05.2023
Date of Pronouncement :	18.07.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order CIT(A)-28, New Delhi dated 07.07.2020 for A.Y. 2011-12.

2. The grounds have been raised by the revenue are as follows:-

1. *"Whether, on the facts and circumstances of the case and law, the Ld. CIT(A) is justified in deleting the addition of Rs. 4,97,14,844/- made on account of Share application money and share capital."*

2. *"The Ld. CIT(A) has failed to take notice of the reason recorded wherein the then AO had mentioned amount of Rs. 4,43,84,844/- and while framing of reason, the AO had mentioned escapement of income at least of Rs. 1,00,000/- which has broader prospective."*

3. *"The Ld. CIT(A) has failed to appreciate that "Approved" connotes that competent authority has read and understood fully the proposal proposed by AO and he is satisfied that the case is fir for reopening us 148 of the I.T. Act."*

4. *"The Ld. CIT(A) has failed to appreciate the bogus nature of transactions as the assessee company did not provide relevant documents before A to establish the genuineness of the transactions so undertaken."*

5. *The Ld. CIT(A) has failed to appreciate that onus of proving transaction as bogus nature on AO comes only after discharge of Onus by assessee by giving all relevant documents which assessee failed to discharge during assessment proceedings.*

Application of Revenue seeking condonation of delay of 255 Days.

3. The Id. Senior DR submitted that the Id. CIT(A) passed order on 07.07.2020 and appeal was filed by revenue on 09.09.2021 by the delay of 255 days. He further submitted that the said period falls within the ambit of extended period by Hon'ble Supreme Court therefore keeping in view suo motto order of Supreme Court the appeal may kindly be admitted for consideration and adjudication. The Id. AR, in all fairness, agreed to the said contention of Id. Senior DR. Keeping in view Covid 19 pandemic situation and order of Hon'ble Supreme Court extending the period of limitation the appeal of the revenue is admitted for adjudication.

4. Ground no. 1 of revenue is general in nature. Apropos remaining ground no. 2 & 3 of revenue the Id. Senior DR, supporting the action of the Assessing Officer, submitted that the Ld. CIT(A) has failed to take notice of the reason recorded wherein the then AO had mentioned amount of Rs. 4,43,84,844/- and while framing of reason, the AO had mentioned escapement of income at least of Rs. 1,00,000/- which has broader prospective. He further submitted that the Ld. CIT(A) has failed to appreciate that "Approved" connotes that competent authority has read and understood fully the proposal proposed by AO and he is satisfied that the case is fir for reopening us 148 of the I.T. Act and the Id. First appellate authority has also failed to appreciate the bogus nature of transactions as the assessee company did not provide relevant documents before AO to establish the genuineness of the transactions so undertaken. Therefore the Id. Senior DR finally submitted that the Id. CIT(A) has granted relief to the assessee on legal grounds, without any valid basis therefore first appellate order may kindly be set aside by restoring that of the Assessing Officer.

5. On the other hand the Id. AR drawing our attention towards paras 4 to 4.7 of first appellate order submitted that the Id. CIT(A) has quashed initiation of reassessment proceedings and consequent reassessment order by rightly following the preposition of Hon'ble jurisdictional High Court of Delhi in the case of CIT vs. N C Cables Ltd. reported as 391 ITR 11 (Del.) for want of valid approval u/s. 151 of the Act as the approving authority while granting approval merely mentioned "approved" which shows that the Id. PCIT has not recorded proper satisfaction and gave approval without application of mind in a mechanical manner. Therefore appeal of revenue deserves to be dismissed only on this ground upholding the first appellate order.

6. On careful consideration of above submissions from the copy of the reasons recorded for initiation of proceedings available at pages 23 to 28 of first appellate order we note that while granting approval u/s. 151 of the Act the Id. PCIT only mentioned approved in column no 14 (at page 24 of paper book). As per judgment of Hon'ble jurisdictional High Court of Delhi in the case CIT vs. N C Cables (supra) and judgment of Hon'ble Supreme Court in the case of CIT vs. S. Goyanka Lime & Chem Ltd. 64 taxmann.com 313 (SC), as also relied by the Id. AR and Id. CIT(A) while granting relief to the assessee, we have no hesitation to hold that the Id. PCIT has not recorded proper satisfaction and granted approval without application of mind in a mechanical manner which is not satisfying the mandatory requirement of provision of sec 151 of the Act. Therefore we are in agreement with the conclusion drawn by the Id. CIT(A) that the superior authorities have merely given their approval in a mechanical manner without independent application of mind, therefore, respectfully following the decision of the Apex Court & Jurisdictional High Court in the case of N C Cables (supra), we hold that the reassessment proceedings are bad in law. Accordingly, the same was rightly quashed by the Id. CIT(A). We are unable to see any valid reason to interfere with the findings of Id. CIT(A) on this legal ground. Therefore ground no. 2 & 3 of revenue are dismissed.

7. Since in the earlier part of this order we have approved the first appellate order quashing the reassessment proceedings and impugned reassessment order for want of valid approval as per mandatory requirement of sec 151 of the Act. Therefore other grounds no. 4 & 5 of revenue have become academic and the learned representatives of both the sides have not placed any arguments thereon, therefore, we don't deem it proper to adjudicate the same in absence of submissions on merits.

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

Order pronounced in the open court on 18.07.2023.

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 18th July, 2023

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi