

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य
एवं

श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष

Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
SONJOY SARMA, JUDICIAL MEMBER**

I.T.A. No.: 595/KOL/2023

Assessment Year: 2021-22

***Popular Complex Advisory Pvt. Ltd.....Appellant
[PAN: AAFCP 3663 C]***

Vs.

ITO, Ward-1(1), Kolkata.....Respondent

Appearances by:

Sh. Mita Rizvi, CA, appeared on behalf of the Assessee.

*Sh. Sudip Kumar Bandyopadhyay, Addl. CIT, D/R, appeared on
behalf of the Revenue.*

Date of concluding the hearing : July 25th, 2023

Date of pronouncing the order : August 22nd, 2023

ORDER

Per Rajesh Kumar, Accountant Member:

This is an appeal preferred by the assessee against the order of Learned Commissioner of Income-tax (Appeals)- NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] dated 24.04.2023 for the Assessment Year (in short 'AY') 2021-22.

2. The only issue raised by the assessee in the various grounds of appeal is against the order of Ld. CIT(A) upholding the order of The Assessing Officer (in short ld. 'AO') wherein Ld. AO has denied and declined the grant of credit of TDS amounting to Rs. 3,31,880/- to the amalgamated company the transferor company amalgamated with the assessee in the amalgamation scheme sanctioned by the Hon'ble Calcutta High Court.

3. The facts in brief are that the scheme of amalgamation between M/s. Bansidhar Commotrade Pvt. Ltd., M/s. Basudev Commosales Pvt. Ltd., M/s. Kanha Vincom Pvt. Ltd., M/s. Lilac Merchandise Pvt. Ltd., M/s. Mahajogi Vinimay Pvt. Ltd., M/s. Narmoda Commercial Pvt. Ltd., M/s. Pushkara Commosales Pvt. Ltd., M/s. Sponsor Tracom Pvt. Ltd. with the assessee i.e. M/s. Popular Complex Advisory Pvt. Ltd. was approved on 20.01.2022 w.e.f. the appointed date i.e. 01.10.2020 u/s 233 of the Companies Act, 2013. In view of the above amalgamation the assessee company pursuant to Clause 16 of Part III of the Scheme, wherein it was clearly stated that all taxes including TDS as well as including all or any refunds, credits and claims, incentives or other benefits belonging to the transferor companies from the appointed date onwards, be treated as the credits, claims and tax benefits of the transferee company and accordingly the assessee claimed the credit of TDS to the tune of Rs. 3,31,880/- in its return of income filed for the relevant assessment year which originally belonged to the merged entities namely M/s. Kanha Vincom Pvt. Ltd., M/s. Lilac Merchandise Pvt. Ltd., M/s. Narmoda Commercial Pvt. Ltd. and M/s. Pushkara Commosales Pvt. Ltd. prior to amalgamation

with effect from 01.10.2020. Return of income was filed on 15.03.2022 wherein the above said TDS credit was claimed. However, while processing the return u/s 143(1) of the Act, Ld. AO, CPC denied the above said claim of TDS credit and determined the liability of the assessee at Rs. 3,49,580/- after charging interest u/s 234B of the Act of Rs. 35,832/- and u/s 234C of the Act of Rs. 15,080/- alleging the mismatch of TDS claimed in the ITR and as appearing in Form 26AS.

4. The said order of Ld. AO, CPC was challenged by the assessee before Ld. CIT(A). However, Ld. CIT(A) upheld the order of Ld. AO by simply stating that only assets of the amalgamated companies of the transferor companies were transferred and not the TDS.

5. After hearing rival contentions and perusing the material on record, we note that the scheme of amalgamation dated 30.12.2010 between the above stated companies and the assessee was approved by the Hon'ble Calcutta High Court with effect from the appointed date i.e. 01.10.2020 vide order dated 20.01.2022. We note that as per Clause 16 of Part III of the Scheme, all taxes including TDS as well as refunds, credits, claims, incentives or other benefits belonging to the transferor companies from the appointed date shall be treated as belonging to the transferee company. Accordingly, the assessee claimed TDS of Rs. 3,31,880/- in the return of income which originally belonged to the four amalgamating entities namely M/s. Kanha Vincom Pvt. Ltd., M/s. Lilac Merchandise Pvt. Ltd., M/s. Narmoda Commercial Pvt. Ltd. and M/s. Pushkara Commosales Pvt. Ltd. prior to the date of amalgamation with effect from 01.10.2020. We have perused the

Scheme of amalgamation approved by the Hon'ble High Court and note that the appointed date is 01.10.2020. In our opinion the said claim of the assessee is genuine as per the provisions of the Act and is squarely covered by the decision of the Hon'ble Supreme Court in the case of *Marshall Sons & Co. (India) Ltd. Vs. ITO* reported in 223 ITR 809 wherein the Hon'ble Apex Court has held that *every scheme of amalgamation has to necessarily provide a date with effect from which the amalgamation/transfer shall take place and it is true that while sanctioning the scheme, it is open to the Court to modify the said date and prescribe such date of amalgamation/transfer as it thinks appropriate in the facts and circumstances of the case. However, if the Court so specifies a date, there is little doubt that such date would be the date of amalgamation/date of transfer. But, where the Court does not prescribe any specific date but merely sanctions the scheme presented to it, it should follow that the date of amalgamation/date of transfer is the date specified in the scheme as the transfer date and it cannot be otherwise.*

6. We have also examined the Form 26AS of the amalgamating companies and find that TDS is deducted in the name of transferee companies but that is immaterial when the scheme is approved by the Hon'ble High Court as post the appointed date, the TDS deducted in the hands of the transferor company shall belong to the transferee company.

7. We, therefore, are not in concurrence with the conclusion drawn by Ld. CIT(A) that only assets of the amalgamated companies of the transferor companies were transferred and not

the TDS. Consequently, we set aside the order of Ld. CIT(A) and direct Ld. AO to allow the credit of Rs. 3,31,880/- to the assessee.

8. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 22nd August, 2023.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Rajesh Kumar]
Accountant Member

Dated: 22.08.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Popular Complex Advisory Pvt. Ltd., 119, Park Street, White House, 3rd Floor, Kolkata-700 016.**
- 2. ITO, Ward-1(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata