

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, KOLKATA
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 2621/Kol/2019
Assessment Year: 2011-12

DCIT, Circle-11(1), Kolkata.	Vs.	M/s. Homage Estates Limited 6, Lyons Range, Kolkata-800001. (PAN: AAGCA6187K)
Appellant		Respondent

&

C.O. No. 2/Kol/2023
In **I.T.A. No. 2621/Kol/2019**
Assessment Year: 2011-12

M/s. Homage Estates Limited 6, Lyons Range, Kolkata-800001.	Vs.	DCIT, Circle-11(1), Kolkata.
Cross Objector		Respondent

Date of Hearing	19.09.2023
Date of Pronouncement	22.09.2023
For the Revenue	Shri P. P. Barman, Addl. CIT, Sr. DR
For the Assessee/Cross Objector	Shri Miraj D. Shah, AR

ORDER

Per Shri Rajesh Kumar, AM

Appeal filed by the revenue and the Cross Objection filed by the assessee are against the order of Ld. CIT(A)-4, Kolkata dated 30.09.2019 for AY 2011-12.

2. The revenue has challenged the order of Ld. CIT(A) deleting the additions on merit to the tune of Rs. 40,00,000/- as made by the AO u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) in respect of unproved transactions and Rs.1,92,10,000/- as made by the AO u/s. 69C of the Act in respect of unsecured loans, whereas in the Cross Objection, the assessee has challenged the order of assessment on technical and legal issue. Therefore, we are deciding the Cross Objection of the assessee first.

3. At the time of hearing, Ld. Counsel for the assessee pressed the legal issue that assessment order framed u/s. 143(3) of the Act read with sec. 147 of the Act dated 10.12.2018 is a nullity and invalid on the ground that no addition has been made for those

items as recorded in the reason u/s. 148(2) of the Act whereas the addition was made in respect of other items.

4. Facts in brief are that the assessee filed return of income for AY 2011-12 on 12.08.2011 declaring total income of Rs.2,97,237/- which was processed u/s. 143(1). Thereafter, the case of the assessee was reopened u/s. 147 of the Act by issuing notice u/s. 148 of the Act dated 23.03.2018. The said notice was complied with by the assessee by filing return of income on 26.04.2018 declaring total income of Rs.2,98,673/-. The case of the assessee was reopened after the AO received information that the assessee has transacted with some companies viz., M/s. Gupta Trading Co., M/s. Adarsh Marketing and M/s. Hindustan Hardware, who are not doing any business activity and are shell/paper companies with no real business and are engaged in the business of providing bogus accommodation entries/share premium/LTCG/STCG and unsecured loans to various beneficiaries. The AO issued questionnaire and called for various information from the assessee and finally made two additions – (i) Rs. 40,00,000/- in respect of unproved transactions u/s. 68 of the Act and (ii) Rs.1,92,10,000/- in respect of unsecured loans u/s. 69C of the Act in the assessment framed u/s. 143(3) read with sec. 147 of the Act dated 10.12.2018. The ld. CIT(A) allowed the appeal of the assessee on merit by directing the AO to delete the addition. Now, revenue is in appeal before us against the order of Ld. CIT(A) deleting the addition on merit whereas the assessee has filed this Cross Objection before us challenging the validity of assessment framed by the AO u/s. 143(3) read with sec. 147 of the Act.

5. After hearing the rival contentions and perusing the material available on record, we find that in this case the reasons have been recorded after receipt of credible information qua the transactions which the assessee had with some companies viz., M/s. Gupta Trading Co., M/s. Adarsh Marketing and M/s. Hindustan Hardware, who were not having any business activity and were primarily engaged in providing accommodation entries in the form of unsecured loans, LTCG, STCG and share capital and share premium. We note that during the course of assessment proceeding, the AO examined the issue and made no addition in respect of transactions made by the assessee with these companies. However, the AO made two additions of Rs.40,00,000/- u/s. 68 of the Act and Rs.1,92,10,000/- u/s. 69C of the Act which were not subject matter of the reasons recorded by the AO u/s. 148(2) of the Act.

Considering these facts and circumstances, we are of the considered view that the AO has no power to make addition in respect of those items which were not subject matter of the reasons recorded if the AO has made not additions for those items of income which were subject matter of reasons recorded. The case of the assessee is squarely covered by the decisions of Hon'ble Calcutta High Court in the case of CIT Vs. Infinity Infotech Parks Ltd. in ITA No. 60 of 2014 and CIT(Exemption) Vs. B. P. Poddar Foundation for Education in ITAT 143 of 2021 dated 13.09.2022. We also note that the case of the assessee is also covered by the decision of Hon'ble Bombay High Court in the case of CIT Vs. Jet Airways (I) Ltd. reported in 331 ITR 236 (Bom.) and Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd. reported in 336 ITR 136(Del.). Accordingly, we quash the assessment framed by the AO as invalid by allowing the Cross Objection of the assessee. Since we have allowed the Cross Objection of the assessee, the appeal of the revenue becomes infructuous and is dismissed.

6. In the result, the appeal of revenue is dismissed and Cross Objection of the assessee is allowed.

Order is pronounced in the open court on 22nd September, 2023

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 22nd September, 2023

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–
2. Respondent .
3. CIT(A)-4, Kolkata.
4. CIT, Kolkata. ,
5. DR, ITAT, Kolkata,

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata