

**IN THE INCOME TAX APPELLATE TRIBUNAL “GAUHATI” BENCH,
VIRTUAL HEARING AT KOLKATA**

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 26/Gau/2023
Assessment Year: 2016-17

DCIT, Central Circle-1, Guwahati	Vs.	M/s. Everest Infra Energy Ltd. A-Sector, Naharlagun, Naharlagun Circle, Naharlagun, SO. Papum Pare, Arunachal Pradesh – 791110 (PAN: AABCE7178B)
Appellant		Respondent

Date of Hearing	09.08.2023
Date of Pronouncement	22.09.2023
For the Appellant	Shri Akkal Dudhwewala, Advocate
For the Respondent	Shri Soumendu Sekhar Das, DR

ORDER

Per Shri Rajesh Kumar, AM

This is an appeal preferred by the revenue against the order of Ld. CIT(A), Central, North East Region, Guwahati, dated 30.12.2022 for AY 2016-17.

2. The only issue raised by the revenue is against the order of Ld. CIT(A) deleting the addition of Rs. 2 Cr. on the ground that no incriminating documents were found in respect of the said additions during the course of search proceedings.

3. The facts in brief are that a search u/s. 132 of the Act was conducted on the assessee in the case of Everest Group on 28.01.2020 including the assessee. Notice u/s. 153A of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) was issued and duly complied with by filing the return of income. The assessee is engaged in the business of civil contractors and was working for various government agencies. The AO noted in the assessment order that during the course of departmental investigation, the names of four companies which subscribed the equity shares of the assessee company, appeared in the departmental data as shell companies. The details of which are as under:

Sl. No.	Name of the companies	Date of allotment of shares	Amount invested in shares (Rs.)
1.	Blow Vinimay Pvt. Ltd.	10,03,2016	50,00,000
2.	Blow Agency Pvt. Ltd.	10,03,2016	50,00,000
3.	Improve Vincom Pvt. Ltd.	10,03,2016	50,00,000
4.	Mars Vinimay Pvt. Ltd.	10,03,2016	50,00,000
		Total:	2,00,00,000

4. The AO observed that the assessee has received share capital/share premium of Rs. 2 Cr. from these shell companies and accordingly issued a show cause notice to the assessee as to why the amount so credited in the books of account of the assessee should not be treated as unexplained cash credit which was replied by the assessee vide letter dated 18.09.2021 submitting various details/evidences. However, AO rejected the same and added the amount received u/s. 68 of the Act as unexplained cash credit.

5. In appellate proceeding, ld. CIT(A) allowed the appeal of the assessee by holding that on the date of search as on 28.01.2020 the assessment in the present case has ready attained finality. The Ld. CIT(A) observed that the assessee has filed the return u/s. 139(1) of the Act on 09.09.2016 whereas the search was conducted on 25.01.2020 meaning thereby that time limit for issuing notice u/s. 143(2) of the Act has already expired and the assessment has attained finality under the provisions of section 153A of the Act. Ld. CIT(A) also noted that the AO has observed during the course of assessment proceeding u/s. 153A of the Act that assessee has received an aggregate of Rs.2 Cr. towards share capital /share premium from Blow Vinimay Pvt. Ltd., Blow Agency Pvt. Ltd., Improve Vincom Pvt. Ltd. and Mars Vinimay Pvt. Ltd. Rs. 50 lakh each and made the addition to the income of the assessee on the ground that assessee has failed to prove the identity, creditworthiness and genuineness of the transactions. Ld. CIT(A) finally allowed the appeal of the assessee on the ground that since the assessment has been unabated on the date of search and, therefore, in absence of any incriminating searched material, no addition can be made while relying on a series of decisions.

6. After hearing the rival contentions and perusing the material available on record, we observe that in the present case the AO has not referred to any

seized incriminating material found during the course of search qua the share capital/share premium of the assessee company. It undisputed that on the date of search the assessment has not abated in terms of provisions of section 153A and, therefore, it is a settled position of law that in case of unabated assessment, addition cannot be made without any incriminating material found during the course of search. The case of the assessee is supported by the decision of the Hon'ble Apex Court in the case of PCIT Vs. Abhisar Buildwell Pvt. Ltd. (2023) 149 taxmann.com 399 (SC) dated 24.04.2023 and DCIT Vs. UK Paints (Overseas) Ltd. Civil Appeal No. 664 of 2021 order dated 24.04.2023. The Hon'ble Supreme Court has affirmed this position of law that in case of unabated assessment, the addition can only be made on the basis of incriminating seized material and not otherwise. We, therefore, respectfully, following the ratio laid down by the Hon'ble Apex Court (supra) uphold the order of Ld. CIT(A) by dismissing the appeal of the revenue.

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

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), Central, North East Region, Guwahati, Guwahati .
4. CIT, ,
5. DR, ITAT, Guwahati,.

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata