

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 1531/KOL/2018
Assessment Year: 2012-2013**

***Flexi Pack India Pvt. Limited,.....Appellant
113/1B, Hazra Road,
Kolkata-700026
[PAN: AAACF4400G]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
Circle-10(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

Shri Amit Agarwal, Advocate, appeared on behalf of the assessee

Shri B.K. Singh, JCIT (Sr. DR), appeared on behalf of the Revenue

Date of concluding the hearing : September 25, 2023

Date of pronouncing the order : September 25, 2023

O R D E R

Per Shri Rajpal Yadav, Vice-President (KZ):-

The present appeal was listed for hearing before the Tribunal on 24th August, 2023 and the Tribunal has passed the following order:-

“24.08.2023: *The present appeal is directed at the instance of assessee against the order of ld. Commissioner*

of Income Tax (Appeals)-4, Kolkata dated 15th May, 2018 passed for A.Y. 2012-13.

2. The assessee has filed its return of income electronically on 14.09.2012 declaring total income of Rs.70,74,280/-. The ld. Assessing Officer has passed an assessment order under section 143(3) on 18.03.2015 and determined the taxable income of the assessee at Rs.97,16,470/-. He made a major addition of Rs.20,00,000/- under section 68 of the Income Tax Act.

3. Dissatisfied with the assessment order, the assessee carried the matter in appeal before the ld. CIT(Appeals) and the appeal to the ld. CIT(Appeals) has been decided by the impugned order on 15.05.2018. The ld. CIT(Appeals) has confirmed the major addition of Rs.20,00,000/-, which was made by the ld. Assessing Officer with the help of section 68 of the Income Tax Act. Apart from this addition, there is other small disallowance.

*4. The ld. Counsel for the assessee at the very outset submitted that the assessee had approached the Settlement Commission and Settlement Commissioner has decided the taxability of income including A.Y. 2012-13 vide order dated 21.07.2023. It is pertinent to observe that application before the Settlement Commission was filed on 23.12.2019 and determination of income by virtue of this order of Settlement Commission is out of the search carried out upon the assessee on 24.01.2019. Therefore, we confronted the ld. Counsel for the assessee how this order is applicable upon the regular assessment of income passed prior to the search conducted upon the assessee. The ld. Counsel sought time to explain this position and hearing is adjourned to **25th September, 2023**. Copy of this Order-sheet be supplied to both the parties.*

*Sd/-
(Rajesh Kumar)
Accountant Member*

*Sd/-
(Rajpal Yadav)
Vice-President (KZ)*

2. Today, the ld. Counsel for the assessee prayed that the assessee is not interested in prosecuting this appeal and it be dismissed as withdrawn. He failed to give any explanation with regard to our query mentioned above

and submitted that after the Settlement Commission's order though passed on the basis of outcome of a search conducted subsequently, the determination of taxable income has attained finality. Since the assessee does not want to press this appeal and prayed for its dismissal, therefore, we do not make any comments, though we have our reservation about the claim made by the assessee. It is for the Revenue to take into consideration all these facts and circumstances. This appeal of the assessee is dismissed as withdrawn. The observations made by us will not impair or injure the case of Assessing Officer or will cause any prejudice to the defence/explanation of the assessee. This appeal of the assessee is to be treated as withdrawn and accordingly dismissed.

3. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on September 25, 2023.

**Sd/-
(Manish Borad)
Accountant Member**

**Sd/-
(Rajpal Yadav)
Vice-President(KZ)**

Kolkata, the 25th day of September, 2023

*Copies to : (1) Flexi Pack India Pvt. Limited,
113/1B, Hazra Road, Kolkata-700026*

(2) *Deputy Commissioner of Income Tax,
Circle-10(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

(3) *Commissioner of Income Tax (Appeals)-4,
Kolkata,*

(4) *Commissioner of Income Tax ,*
(5) *The Departmental Representative*
(6) *Guard File*
TRUE COPY

By order

*Assistant Registrar
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.