

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.607/Kol/2023
Assessment year: 2011-12

DCIT, C.C-3(3), Kolkata.....Appellant

vs.

M/s Surya Alloy Industries Ltd.Respondent
1/1 Camac Street, 3rd Floor,
P.O. Park Street,
Kolkata- 700016.
[PAN: AADCS5890E]

Appearances by:

Shri Sudip Kr. Bandyopadhyay, Addl. CIT-DR, appeared on behalf of the appellant.
Shri N. S. Saini, AR, appeared on behalf of the Respondent.

Date of concluding the hearing : July 27, 2023

Date of pronouncing the order : September 27, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the revenue against the order dated 03.02.2023 of the Commissioner of Income Tax (Appeals)-21, Kolkata (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The revenue in this appeal has taken the following grounds of appeal:

“(i) That, on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in appreciating the facts that the assessee failed to establish the identity, genuineness of the transaction and creditworthiness

of party regarding receipt of sum of Rs.2,53,00,000/- in original assessment proceedings and also in remand proceedings.

(ii) That, on the facts and in the circumstances of the case and under law, the Ld.CIT(A) has erred in appreciating the facts that the assessee failed to file any details or documents as regard to substantiate the identity, creditworthiness and genuineness of the transaction in assessment proceedings.

(iii) That, the decision of Ld.CIT(A) is contrary to the facts and evidence of the case available on the record.

(iv) The Ld.CIT(A) is not justified by allowing the appeal of the assessee without refuting the facts of the statements of the entry operators Shri Jagadish Purohit.

(v) That the appellant craves the right to add, alter, amend or withdraw any ground or grounds of appeal before or at the time of hearing of the case.”

3. The brief facts of the case are that the Assessing Officer received information from the investigation wing that the assessee during the year had received an amount of Rs.2.53 crores from M/s Unisys Software & Holding Industries Ltd. The Assessing Officer further took note of the report of the investigation wing, wherein, it has been stated that the said company was operated by one Jagadish Purohit and his other family members. That the said Jagadish Purohit had made high value fund transfers through banking channels in the case of various inter-connected private limited companies, which were operated by Jagdish Purohit and his other family members and that the said companies including M/s Unisys Software & Holding Industries Ltd. were shell companies. The Assessing Officer further noted that the statement of Jagdish Purohit was also recorded u/s 132(4) of the Act by the director of investigation and he admitted that the companies in which he and/or his family members were directors were merely paper companies and were managed through dummy directors. The case of the assessee,

therefore, was reopened u/s 147 of the Act. During the assessment proceedings, the assessee was asked to explain about the genuineness of the transaction. Since, the assessee company could not explain the aforesaid transaction, therefore, the Assessing Officer treated the aforesaid receipt as undisclosed income of the assessee and made the additions on the same into the income of the assessee.

4. In appeal before the CIT(A), the assessee submitted that the assessee duly furnished the reply and explanations before the Assessing Officer, however, the Assessing Officer failed to take note of the same. It has been noted by the CIT(A) in the impugned order that the copy of the reply along with acknowledgement of receipt of the reply dated 29.11.2018 was also produced before the CIT(A). That the said reply consisted of relevant bank statement and ledger accounts in respect of M/s Unisys Software & Holding Industries Ltd. showing the transaction made by the assessee with such party. The ld. CIT(A) after going through the details of the transactions and bank statements observed that from the evidences filed by the assessee it was clear that during the F.Y 2010-11, the assessee company had made advance to the tune of Rs.5.80 cores to M/s Unisys Software & Holding Industries Ltd. which were returned back to the assessee company in the F.Y 2010-11 only. The ld. CIT(A), therefore, held that the assessee had duly explained the transaction with M/s Unisys Software & Holding Industries Ltd. and that it was not a case of unexplained income. The amount of Rs.2,53 crores was returned by the said M/s Unisys Software & Holding Industries Ltd. out of the amount received by the said M/s Unisys Software & Holding Industries Ltd. of Rs.5.80 crores from the assessee in the same financial

year relevant to assessment year under consideration. The relevant part of the observation of the CIT(A) is reproduced as under:

“On the merits of the addition, I find from the evidence filed such as the bank statement of the appellant and the copy of the ledger account that the amount of Rs.2.53 crores was paid by the Appellant to M/s. Unisys Software and Holdings Industries Ltd in May 2010 through RTGS and the same was received back in December 2010 and March 2011 through RTGS.

From the evidences filed by the appellant, it is clear that during the F.Y: 2010-11 the appellant company had made advances to the tune of Rs.5,80 crores to M/s. Unisys Software and Holdings Industries Ltd which were returned back to the appellant company with the F.Y 2010-11 only.

Therefore, the claim of the AO that the assessee was unable to establish the identity of the Creditor and the genuineness of the transaction has no basis. It is rather a case, where the appellant has submitted the necessary documentary evidence and has discharged his onus, whereas the AO has made no further enquiries to prove otherwise, apart from relying on the statement of one Jagadish Purohit. It is not the case that the appellant was in receipt of any fresh credit from M/s Unisys Software & Holding Industries Ltd but had only received the money advanced by it to the same concern during the same F.Y: 2010-11. During the course of appeal proceedings, also the AO did not submit anything which would prove anything else. He was admittedly in possession of all the evidences, the bank statements, as well as the explanations offered by the appellant at the time of framing his assessment order, or if nothing else, at the time that these documents were sent to him in remand, but he has made adverse comments upon these.

This shows that the observation made by the AO is contrary to the real facts and therefore, on merits, the addition of Rs.2.53 crores as bogus cash credit u/s 68 is unsustainable on the facts of the case. I therefore direct the AO to delete the addition of Rs.2.53 crores u/s 68 of the Act.”

5. The ld. DR could not brought to our knowledge any distinguishing fact which may call for our interference with the above observation made by the CIT(A). The assessee has duly prove the aforesaid transaction with M/s Unisys Software & Holding Industries Ltd. as genuine. We,

therefore, do not find any merit in the appeal of the revenue and the same is accordingly dismissed.

6. In the result, the appeal of the revenue stands dismissed.

Kolkata, the 27th September, 2023.

Sd/-

[डॉक्टर मनीष बोरड /Dr. Manish Borad]

लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]

न्यायिक सदस्य /Judicial Member

Dated: 27.09.2023.

RS

Copy of the order forwarded to:

- 1 DCIT, C.C-3(3), Kolkata
2. M/s Surya Alloy Industries Ltd
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches