

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.: 876/KOL/2023

Assessment Year: 2021-22

M/s. Bata Properties Ltd.....Appellant
[PAN: AABCB 0912 G]

Vs.

DCIT, CPC, Bangalore/DCIT, Circle-1(1), Kolkata...Respondent

Appearances by:

Assessee represented by – Sh. S. Jhajharia, A/R.

Department represented by – Sh. Ankur Goyal, JCIT, Sr. D/R.

Date of concluding the hearing : October 18th, 2023

Date of pronouncing the order : November 7th, 2023

ORDER

Per Rajesh Kumar, Accountant Member:

This appeal preferred by the assessee is against the order of Learned Commissioner of Income-tax (Appeals)- NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] dated 11.07.2023 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) confirming the order of the DCIT, CPC in not allowing the credit on account of advance tax deposited of Rs. 1 Lakh and tax deducted at source of Rs. 87,181/- in the hands of amalgamating company to the amalgamated company in the return of income filed after the date of amalgamation.

3. The facts in brief are that the assessee filed the return of income on 27.12.2021 declaring total income at Rs. 33,61,000/- and claimed the credit for TDS of Rs. 3,55,357/- and advance tax of Rs. 7,15,500/- aggregating to Rs. 10,70,857/-. It is pertinent to state that Coastal Commercial and Exim Ltd. was amalgamated with the assessee company w.e.f. 01.04.2020 in terms of the order of National Company Law Tribunal of Calcutta dated 09.04.2021 and as per the scheme of amalgamation all the income and liabilities were taken into account in the books of the amalgamated company. Accordingly, the assessee claimed the advance tax of Rs. 1 Lakh deposited by the amalgamating company and also Rs. 87,181/- TDS deducted at source in the hands of the amalgamating company beside the income accruing to the amalgamating company relating to the period post amalgamation was also shown as income in the income tax return of the amalgamated company. However, the AO, CPC in the order/intimation passed u/s 143(1) of the Act denied the credit of advance tax deposited by the amalgamating company as well as the TDS deducted on behalf of the amalgamating company while

the income of the amalgamating company was duly considered by the DCIT, CPC in the hands of the amalgamated company.

4. Aggrieved by the order of the AO, CPC the assessee preferred appeal before Ld. CIT(A) who dismissed the appeal on the ground that TDS and advance tax was not deducted/deposited in the name of amalgamated company and also the corresponding income not being offered to tax and thus, justified the order passed by the AO, CPC.

5. After hearing the rival contentions and perusing the material on record, we find that in the scheme of amalgamation which is normally made effective from a certain date all incomes, asset and liabilities including advance tax and tax deducted at source were to be declared and accounted for in the books of the amalgamated company with all consequences to be followed. In the present case the Coastal Commercial and Exim Ltd. got amalgamated with the assessee company vide order dated 09.04.2021 passed by the National Company Law Tribunal of Calcutta which was effected from 01.04.2020 and as per the scheme of amalgamation all income liabilities were accounted for in the books of the amalgamating company. The amalgamated company incorporated the income belonging to the amalgamating company and also claimed the credit for advance tax deposited by amalgamating company as well as TDS deducted on its behalf amalgamating company on its PAN. In our opinion, the scheme of amalgamation, once approved, then post the effective date all the assets and liabilities including incomes, credit for TDS/advance tax have to be allowed to the amalgamated company. In the present case, the

assessee has rightly claimed the credit for advance tax deposited by the amalgamating company as well as TDS deducted on its behalf and it is for these reasons the order of Ld. CIT(A) appears to be incorrect and cannot be sustained. The case of the assessee is supported by the decision of Coordinate Bench in the case of *Popular Complex Advisory Pvt. Ltd. vs. ITO* in ITA No. 595/KOL/2023 for AY 2021-22 order dated 22.08.2023 in which the similar issue has been decided in favour of the assessee, the operative part whereof is extracted below:

“5. After hearing rival contentions and perusing the material on record, we note the fact that the scheme of amalgamation dated 30.12.2010 between the above stated companies was approved by the Hon'ble Calcutta High Court with effect from the appointed date i.e. 01.10.2020. 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 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 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 dated 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 perused the Form 26AS and find that TDS is deducted in the name of transferee company but that is immaterial when the scheme is approved by the Hon'ble High Court as post the appointed date of 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 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.”

6. We therefore, respectfully following the decision of the Coordinate Bench under similar facts, set aside the order of Ld. CIT(A) and direct the AO to allow the credit of advance tax as well as TDS relating to amalgamating company in the hands of the amalgamated company.

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

Kolkata, the 7th November, 2023.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Rajesh Kumar]
Accountant Member

Dated: 07.11.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. M/s. Bata Properties Ltd., 6A, S.n. Banerjee Road, Kolkata-700 013.**
- 2. DCIT, CPC, Bangalore/DCIT, Circle-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