

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE**

**SHRI R.K. PANDA, VICE PRESIDENT  
AND  
SHRI LALIET KUMAR, JUDICIAL MEMBER**

आ.अपी.सं / **ITA No.449/Hyd/2023**  
(निर्धारण वर्ष / Assessment Year: 2012-13)

Cirus Solar Systems Private Limited, Hyderabad, 1009 13 <sup>th</sup> Phase, KPHB Colony, Hyderabad – 500072, Telangana.  PAN : AA ECC0982A.	Vs.	The Deputy Commissioner of Income Tax, Circle – 1(2), Hyderabad.
अपीलार्थी / Assessee		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Mohd. Afzal, Advocate.  
राजस्व द्वारा/Revenue by: Ms. Sheetal Sarin, Sr. AR.

सुनवाई की तारीख/Date of hearing: 21.12.2023  
घोषणा की तारीख/Pronouncement on: 22.12.2023

**ORDER**

**PER LALIET KUMAR, J.M.**

The captioned appeal is filed by the assessee feeling aggrieved by the order of Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC), Delhi dt.01.08.2023 invoking proceedings under sections 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, "the Act") for the A.Y 2012-13.

2. The grounds raised by the assessee read as under :

- “1. The order of the learned Commissioner of Income Tax (A) is against the law, weight of evidence and probabilities of case.
2. The learned Commissioner erred in confirming the order of the Assessing Officer wherein, an amount of Rs.4,01,00,944/- is added u/s 69C of the IT Act.
3. The learned Commissioner ought to have appreciated that the assessee has not debited an amount of Rs.4,01,00,944/-, therefore, erred in confirming the order of the DCIT wherein, an amount of Rs.4,01,00,944/- is disallowed as unexplained expenditure u/s 69C of the IT Act.
4. The learned Commissioner ought to have appreciated that the original assessment is completed u/s 143(3) of the IT Act on 26.12.2014, whereas, notice u/s 148 was issued on 26.03.2019, beyond four years ignoring the proviso to section 147, without proving that income chargeable to tax has escaped assessment on account of failure on the part of assessee to disclose fully and truly all material facts necessary for his assessment, therefore, erred in confirming the addition of Rs.4,01,00,944/-.
5. The learned Commissioner ought to have appreciated that the amount of Rs.4,01,00,944/- is routed through assessee, whereas, the transaction is related to Indu Projects Ltd and the assessee is only a conduit in respect of Rs.4,01,00,944/-, therefore, erred in confirming the addition of Rs.4,01,00,944/-.
6. The learned Commissioner ought to have appreciated that the transactions with Raj Sheela Nirman Pvt Ltd is accepted in the case of Indu Projects Ltd for the assessment year 2012-13, in the order u/s 143(3) r.w.s 147 dt: 19.12.2019, therefore, erred in confirming the addition of Rs.4,01,00,944/-.”

3. The brief facts of the case are that assessee is in the business of installation and commissioning of Solar Systems. It filed its return of income admitting an income of Rs.45,84,169/ - u/s 139(1) of the IT Act. The case was selected for scrutiny and in response to the notices, the assessee filed all the information sought by the Assessing Officer. After examining the information submitted, Assessing Officer completed the assessment by accepting the income admitted. Notice u/s 148 was issued on 26.03.2019. In response to this notice, return of income was filed on 25.04.2019, admitting the same income as originally returned and assessed at Rs.47,84,170/-.

3.1. During the course of assessment, assessee sought reasons for the issuance of notice u/s 148 of the I.T. Act. The

reasons provided state that the assessee claimed bogus expenditure of Rs.4,01,00,944/- which was alleged to be paid by cheque to a company namely Rajashila Nirman Pvt Ltd, which was withdrawn by the said company next day. Considering this explanation, the assessee submitted that it received contract from Photon Energy Systems Pvt Ltd for an amount of Rs.63,21,70,298 /- towards material supply and an amount of Rs.10,34,69,176/- towards contract work and the same has been given back to back to M/s Indu Projects Ltd for an amount of Rs.62,00,72,436/- towards material and Rs.10,04,37,472/- towards contract work, wherein, the assessee realized a profit of Rs.1,51,29,566/- which has been included in the profit and loss account. It was also submitted that the payment made to M/s Rajashila Nirman Pvt Ltd was on behalf of Indu Projects Ltd. Assessee further submitted that it has not debited the amount of Rs.4,01,00,944/- to its Profit and loss account and therefore, the same cannot be disallowed. However, the Assessing Officer disbelieved the version of assessee and treated the same as unexplained expenditure for the A.Y. 2012-13 by virtue of Section 69 of the Act and thus, completed the assessment interalia making an addition of Rs. 4,01,00,944/- u/s 69C of the IT Act.

4. Feeling aggrieved with the order of Assessing Officer, assessee filed an appeal, which was later migrated to the Id.CIT(A), NFAC, Delhi, who dismissed the appeal of assessee.

5. Aggrieved with the order of Id.CIT(A), assessee is now in appeal before us on the grounds mentioned hereinabove.

6. At the outset, learned Authorised Representative has drawn our attention to Paras 4 to 5.1 of the order of Ld.CIT(A), which is to the following effect :

“4. *Submissions of the Appellant: During the course of appellate proceedings, various notices of hearing were issued to the appellant. However, no submission has been made by the appellant, hence the appeal is decided on the basis of material available on record.*

5. *Decision: In this case, the addition has been made by the Assessing Officer worth Rs.4,01,00,944/- u/s.69C of the Income Tax Act, 1961. The case was reopened u/s 147 of the Income Tax Act on the basis of information that the appellant has made payment of Rs. 4,01,00,944/- to M/s. Rajashila Nirman Pvt Ltd (a paper concern having no business activity). As per the company master data of MCA website, the status of M/s Rajashila Nirman Pvt Ltd is a struck off. Hence this is clear that it is a paper concern with no business activity. Relying upon the decision of Hon’ble Delhi High Court in the case of CIT vs. M/s Nova Promoters & Finlease (P) Ltd (Delhi), the Assessing Officer made the addition.*

5.1 *Now before me in the appellate proceedings, no details have been filed before me despite various notices. Hence, the addition of the Assessing Officer is confirmed and appeal of the appellant is dismissed on this ground.”*

6.1. It was submitted that since sufficient opportunity was not granted to the assessee, the matter may kindly be remanded back to the file of Ld.CIT(A).

7. Per contra, Ld. D.R. had submitted that from the finding of Ld.CIT(A), it is abundantly clear that the assessee company is a paper company and has not carried out any activities during the year under consideration.

8. We have heard the rival submissions and perused the material on record. On perusal of the record, it is clear that the name of the assessee company was struck down in the master data of MCA website and therefore, the company is not in existence. However, despite the fact of non-existence, the legal entity of the assessee company continues to exist for the purposes of making the assessment under the provisions of the Income Tax Act. In the light of the above, it is mandatory that the principles of natural justice should be complied with by the lower authorities before passing the order by the Ld.CIT(A). In the light of the

above, the appeal of the assessee is remanded back to the file of Ld.CIT(A) with the following directions :

1. That the order passed by the Ld.CIT(A) is set aside with a direction to pass a fresh order in accordance with the law after granting opportunity of hearing to the assessee.
2. The Ld.CIT(A) shall serve the notice through the learned Authorised Representative of the assessee given in Form 36 so that there should not be any objection with respect to non-service of notice by the Ld.CIT(A) in the appellate proceedings.
3. The assessee shall appear before the Ld.CIT(A) on the first date which shall be communicated by the Ld.CIT(A) to the assessee as well as to the Ld.A.R. who is presenting the appeal before us.
4. Needless to say that the assessee is at liberty to file all the evidence / documents in support of its case.

With the above directions, the appeal of the assessee is allowed for statistical purposes.

9. In the result, the appeal of assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 22<sup>nd</sup> December, 2023.

**Sd/-**

**Sd/-**

<b>(R.K. PANDA)</b> <b>VICE PRESIDENT</b>	<b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 22<sup>nd</sup> December, 2023.

***TYNM/sps***

Copy to:

S.No	Addresses
1	Cirus Solar Systems Private Limited, Hyderabad, 1009 13 <sup>th</sup> Phase, KPHB Colony, Hyderabad – 500072, Telangana.
2	The Deputy Commissioner of Income Tax, Circle – 1(2), Hyderabad.
3	PCIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*