

आयकर अपीलीय अधिकरण, कोलकाता पीठ “एसएमसी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA
श्री मनीष बोरड, लेखा सदस्य एवं श्री अनिकेश बनर्जी, न्यायिक सदस्य के समक्ष
[Before Shri Manish Borad, Accountant Member & Shri Anikesh Banerjee, Judicial Member]

I.T.A. No. 1273/Kol/2023
Assessment Year: 2009-10

Smt. Supriya Gupta (PAN: AEAPG 8162 P)	Vs.	ITO, Ward-30(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	25.01.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	30.01.2024
For the Appellant/ निर्धारिती की ओर से	Shri Sanjoy Dixit, Advocate
For the Respondent/ राजस्व की ओर से	Shri L. N. Dash, Addl. CIT(D.R)

ORDER / आदेश

Per Anikesh Banerjee, Judicial Member:

The instant appeal of the assessee was filed against the order of Learned Commissioner of Income Tax (Appeals)-NFAC, Delhi (in brevity Ld. CIT(A)) order passed u/s 250 of the Income Tax Act, 1961 (in brevity “the Act”) for AY 2009-10 date of order 27.09.2023. The impugned order was emanated from the

order of Ld. Income Tax Officer, Ward-30(3), Kolkata (in brevity “the Ld. AO”) order passed u/s 147/143 (3) of the Act date of order 30.12.2016.

2. The assessee has taken following grounds:

1. *That on the facts and circumstances of the case, the dismissal of the appeal by the Ld. CIT (Appeal)-National Faceless Appeal Centre, Delhi (hereinafter referred to as the “Ld. CIT(A)”)*, vide its order dated 27.09.2023, solely on ground of non-prosecution is in exercise of excess jurisdiction not conferred under the Income Tax Act, 1961 and therefore the order dated 27.09.2023 is bad in law and liable to be set aside.

2. *That the Ld. CIT(A) erred in law in not appreciating that the very initiation of re-assessment proceedings has been done by Assessing Officer who lacks jurisdiction over your appellant assessee in view of the CBDT Instruction No. 1/2011, dated 31.01.2011. The returned loss was Rs. 4,45,74,812/- and the proper jurisdictional officer who could assume jurisdiction, as per the CBDT Instruction dated 31.01.2011, could only be a Deputy Commissioner/Assistant Commissioner and not the Income Tax Officer. Therefore, the very notice, dated 30.03.2016, issued under Section 148 and the subsequent proceedings and the re-assessment order, dated 30.12.2016, passed under Section 147/143(3) of the Income Tax Act, 1961 is void-ab-initio.*

3. *The Ld. CIT(A) failed to appreciate that the non-disposal of the objections raised by the appellant assessee to the very initiation of the reassessment proceedings by a speaking order is against the settled law pronounced by the Hon’ble Supreme Court in **GKN Driveshafts (India) Limited v ITO, 259 ITR 19(SC)** and such action of the Ld. CIT(A) is bad in law.*

4. *That the Ld. CIT(A) failed to appreciate that re-assessment proceedings were initiated under Section 147 of the Act by issuing notice under section 148 of the Act, beyond a period of four years from the relevant assessment year, in case where the scrutiny assessment was duly completed under Section 143(3) of the Act without recording in the reasons to believe the vital fact that the escapement of income was on account of failure on part of the appellant assessee to disclose fully or truly all material facts. That reopening of completed assessment beyond four years without complying with the conditions prescribed in the first proviso to Section 147 of the Act is bad in law and the very initiation of the proceedings is void-ab-initio.*

5. *That the Ld. CIT(A) failed to appreciate that the reopening of assessment was solely on the basis-of information received from the investigation wing of the income tax department without even analyzing the records of the regular assessment proceedings and that such reopening of assessment was without independent application of mind and on borrowed satisfaction.*

6. That the Ld. CIT(A) failed to appreciate that the assessment proceedings were completed, and demand was confirmed without issuing a show cause notice which is clearly in violation of the principles of natural justice.

7. That the Ld. CIT (A) erred in facts and law, by dismissing the appellant appeal without appreciating the facts that the Ld. Assessing Officer has arbitrarily added a sum of Rs.30,00,000/-, received as unsecured loans from M/s. Investrick Securities Pvt. Ltd., as unexplained cash credit under Section 68 of the Income Tax Act completely ignoring the records available in the original assessment proceedings and documents filed during the reassessment proceedings.

8. That the Ld. CIT(A) failed to appreciate from the records that the Ld. Assessing Authority has erred in treating the business loss of the appellant as short-term capital loss.

9. The appellant craves leave to add to, amend, modify, rescind, supplement, or alter any of the grounds stated hereinabove either before or at the time of the hearing of this appeal.

2. Brief facts of the case is that the assessee is running the trading business.

The business loss was occurred for AY 2009-10. The assessee has taken loan from the various parties. The assessee had taken amount of Rs. 30,00,000/- the from M/s Investrick Securities Pvt. Ltd. This particular unsecured loan was credited in the books of account of the assessee. The assessee's case was reopened u/s 148 and the Ld. AO has considered this loan creditor as a bogus loan creditor and added back the entire amount of Rs. 30,00,000/- as unexplained income of the assessee u/s 68 of the Act. The assessee has submitted relevant documents before the Ld. AO during the assessment proceedings. But remained unsuccessful. Being aggrieved, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) upheld the assessment order and ex-parte order was passed after allowing the assessee number of dates of

hearing during the appellate proceedings. Being aggrieved the assessee filed an appeal before us.

4. The Ld. A.R vehemently argued and submitted a paper book which is kept in the record. The Ld. A.R first invited our attention in paper book, pages 32 to 40 where the assessee submitted all the documents dated 16.08.2016 before the Ld. AO. The Ld. A.R further argued that the assessee has taken loan to cover up the trading loss from business. And this impugned assessment year, the assessee had faced the assessment U/s 143(3) of the Act with addition of business loss. The appellate authority allowed the ground of assessee. The department had filed appeal before the ITAT by challenging the appeal order. Finally, the ITAT passed an order in favour of the assessee.

5. The Ld. A.R further invited our attentions to assessment order. The relevant paragraphs are culled as below:

“Subsequently, information available from record revealed that unaccounted money of Rs. 30,00,000/- was transferred to the account of Smt. Supriya Gupta’s account from M/s Investrick Securities Pvt. Ltd. during the previous year relevant to the assessment year under consideration. Accordingly, action u/s 147 of the I.T. Act, 1961 was invoked and notice u/s 148 of the I.T. Act, 1961 was issued. Statutory notice u/s 143(2) of the Act, was issued and served on the assessee. In compliance to the said notice, Mr. Ashok Kr. Sharma, FCA and A.R appeared and the case was discussed with him. As desired by the A.R, assessee’s objection petition has been disposed off and communicated to him.

It is gathered from records that in regard to unaccounted money of Rs. 30,00,000/- was transferred in her account from M/s Investrick Securities Pvt. Ltd.

The A.R of the assessee could not produce papers/documents to establish the authenticity and source with mode. From the assessment order passed u/s 143(3) of

the I.T. Act, 1961 dated 20.12.2011, the same amount is reflected as assessee's loan but nothing is furnished in respect of date and mode. As the amount of Rs. 30,00,000/- remained unexplained, the same is treated as cash credit u/s 68 of the Act."

6. The Ld. D.R vehemently argued and fully relied on the order of the revenue authorities.

7. We heard rival submissions and considered the documents available in the record. The assessee has filed its Income tax return and loan amount of Rs. 30,00,000/- was duly disclosed in the return of income filed u/s 139(1) of the Act. The assessee has taken a loan to cover up the trading loss during impugned assessment year. The other loan creditors are duly accepted by the department. But only the creditor of impugned loan is not recognized by the ld. AO. The appeal order was passed ex-parte without considering the documents and without considering the grounds of the assessee. In assessment the verification was not proper in relation to impugned loan of the assessee. Only the Ld. AO relied on the order of investigation authority. In our considered view, we remit back the matter to the file of Ld. CIT(A) for de novo appeal. Both the revenue and the counsel of the assessee had not made any objection for remanding back the issue before the ld. CIT(A). Needless to say, that the ld. CIT(A) shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence/explanation submitted by assessee in its defence shall be admitted by the ld. CIT(A) and adjudicated on merits in accordance with law. We order accordingly.

8. In the result, the appeal of the assessee in **ITA No. 1273/Kol/2023** is allowed for statistical purposes.

Order is pronounced in the open court on 30th January, 2024

Sd/-
(Manish Borad/ मनीष बोरड)
Accountant Member/लेखा सदस्य

Sd/-
(Anikesh Banerjee /अनिकेश बनर्जी)
Judicial Member/न्यायिक सदस्य

Dated: 30th January, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Smt. Supriya Gupta, 1D, Sopan Apartment, 63 Bright Street, Kolkata-700019.
2. Respondent – ITO, Ward-30(1), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata