

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA

[Before Shri Rajesh Kumar, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 880/Kol/2023
Assessment Year : 2013-14

ITO, Ward-1(1), Kolkata	Vs	Onkar Commodeal Private Limited
		PAN: AABCO 1390 D
Appellant		Respondent

Date of Hearing	28.12.2023
Date of Pronouncement	12.02.2024
For the Assessee	Mr. Siddharth Agarwal, Advocate
For the Revenue	Mr. Rakesh Kumar Das

ORDER

Per Sonjoy Sarma, JM:

This appeal of the revenue for the assessment year 2013-14 is directed against the order dated 21.03.2021 passed by the ld. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the ld. CIT(A)']. The revenue has raised the following grounds of appeal:

"1. That on the facts and in circumstances of the case, the ld. CIT(A) NFAC erred in passing the order by deleting the disallowance on account of investment in unlisted securities.

2. That on the facts and circumstances of the case, the unlisted equities are not verified as the assessee failed to offer any explanation.

3. That on the facts and circumstances of the case, the tax effect in this case is Rs. 2,79,09,695/- which is above the prescribed monetary limit i.e. Rs. 50,00,000/- for filing of appeal before ITAT as per CBDT Circular No. 17/2019 dated 08.08.2019."

2. Brief facts of the case are that the assessee filed its return of income by showing total loss of Rs. 16,738/- for the assessment year in question. The case of the assessee was selected for scrutiny under CASS followed by notices issued u/s 143(2) and 142(1) of the

Act. However, in response to the notices, no one turned up and the ld. AO viewed that since assessee company had failed to offer any explanation regarding investment made in the unlisted equity shares of a company to the tune of Rs. 8,60,00,000/- and added alleged sum in the hands of assessee. Similarly, the ld. AO further added interest income of Rs. 4,69,473/- which was not disclosed by the assessee while filing its return of income.

3. Dissatisfied with the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was partly allowed on the issue of investment made in unlisted equity shares of a company i.e. Fublco Coal India Ltd. and on the issue of interest income sustained the order passed by the AO.

4. Aggrieved by the order of ld. CIT(A), revenue is in appeal before the Tribunal.

5. At the time of hearing, ld. DR stated that the impugned order passed by the ld. CIT(A) by deleting the disallowance made by the AO on account of investment made by assessee in unlisted security is not correct and needs to be set aside by the Tribunal. He further contended that during the appellate proceeding before the ld. CIT(A). The assessee had submitted additional evidences in order to substantiate its claim. However, on such evidence, the ld. AO could not able to offer its comment before the ld. CIT(A) on the additional evidences filed by the assessee. Therefore, the matter needs to be set aside by the Tribunal to ld. CIT(A) for fresh adjudication in order to give opportunity to ld. AO for filing his objection on the addition of evidence filed by the assessee.

5. (a) On the other hand, ld. AR supported the decision rendered by the ld. CIT(A) stating that the impugned order passed by the ld. CIT(A) is correct and there is no need to interfere in the order any more. Since the issue involved in the instant appeal is in relation with purchase of equity shares by the assessee company were in relation with the earlier assessment year and those were made by the assessee in the A.Y. 2012-13 and when such investments were not in connection with the current assessment year i.e. 2013-14. In such situation section 69C of the Income Tax does not attract upon the assessee and the ld. CIT(A) has rightly allowed the grounds of appeal taken by the assessee by observing as follows:

“As per the audit report of FY 2012-13 of independent auditor K.N. Maheshwari & Advocates dated 28.08.2013 filed by the appellant, it is noted that the current investments of Rs. 8,60,00,000/- are unchanged i.e. same figure exist on 31.03.2012 and 31.03.2013. Also the appellant has submitted details of purchase of unquoted shares in FY 2011-12 of Rs. 25 lakhs and opening figure as on 01.04.2011 is Rs. 8.35 crores. The AO has not discussed the issue in details in assessment order nor stated the section under which addition is made. However, since the source of such investment in unlisted equities of Rs. 8,60,00,000/- has been questioned. It is necessary to refer to section 69C of I.T. Act where addition on unexplained expenses can be made in the FY when such expenditure is incurred. Clearly the expenditure has not been incurred in FY 2012-13 (AY 2013-14) as per details filed by the appellant and nothing to the contrary has been stated by the AO. On going through the above, it is amply clear that the contention of the appellant that no purchase of unquoted shares/unlisted securities has been made during the year and the same pertain to earlier years investments and further that there is no change in investments during the year cannot be faulted. Thus, any expenses/income/investment etc. pertaining to earlier years and not to the year under consideration cannot be added to the income of the appellant. In view of the same, since this amount of Rs. 8,60,00,000/- pertains to earlier years and not to the year under consideration, the AO is directed to delete the same. This ground of appeal is allowed.”

6. We after hearing the rival submission of the parties and on perusal of material available on record find that alleged investment were made by the assessee in unquoted stock made relating to with the assessment year 2012-13 and the ld. AO made the alleged addition in the assessment year 2013-14. In order to attract section 69C of the I.T. Act, it is needed to be made in the year in which such investments were made by the assessee. We have also observed from the order of the ld. CIT(A) where it was clearly stated that the above facts while allowing the claim of the assessee. However, in interest of justice, we set aside the instant issue to ld. AO with a direction for limited verification of issue, whether alleged investments were made by the assessee in the previous year 2012-13 or no. In the case it is found that it was made in 2011-12 then such addition made by ld. AO has to be deleted in terms of our above findings as the provisions of section 69C would not be applicable in that scenario. Accordingly, the instant appeal filed by the revenue is allowed for statistical purpose.

7. In the result, the appeal of the revenue is allowed for statistical purpose.

Order pronounced in the open court on 12.02.2024

Sd/-

Sd/-

(Rajesh Kumar)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 12.02.2024
Biswajit, Sr. PS

ITA No. 880/Kol/2023
AY: 2013-14
Onkar Commodeal Private Limited

Copy of the order forwarded to:

1. Appellant – ITO, Ward-1(1), Kolkata.
2. Respondent – Onkar Commodeal Private Limited, 3, Saklat Place, Kolkata-700072.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata