

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' : NEW DELHI**

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.210/DEL/2023
(Assessment Year: 2009-10)**

Satyam Home Appliances Pvt. Ltd.,
(erstwhile company represented by
Ex-Director, Ms. Seema Mangla),
B-144, Prashant Vihar, Rohini,
Delhi – 110 085.

vs. ITO, Ward 22 (4),
New Delhi.

(PAN : AAKCS4230M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Vibhu Gupta, Advocate
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 13.02.2024
Date of Order : 16.02.2024

ORDER

This appeal by the assessee is directed against the order of the Id. CIT
(Appeals)-28, New Delhi dated 30.10.2018 for the assessment year 2009-10.

2. Various grounds of appeal raised by the assessee read as under :-

“1. That on the facts and circumstance of the case and in law, the impugned reassessment order dated 29.03.2016 passed under section 143(3) read with section 147 of the Income Tax Act, 1961 ("the Act") is beyond jurisdiction, illegal and bad in law.

1.1 That the impugned reassessment order is beyond jurisdiction and bad in law, since the proceedings under section 147 of the Act have been conducted and the order has been passed in the name of erstwhile Mis. Satyam Home Appliances Pvt. Ltd. which already stood ceased to exist and its name had been struck-off by the Ministry of Corporate Affairs on 25.06.2014 (i.e. much before issuance of notice under section 148 of the Act).

1.2 That the assessing officer ("AO") erred on facts and in law in not dropping the reassessment proceedings initiated in the case of erstwhile company even when the jurisdictional notice under section 148 of the Act was served on a non-existent entity.

Without Prejudice

2. That on the facts and circumstance of the case and in law, the very initiation of proceedings under section 148 of the Act is illegal and bad in law since the proceedings have been initiated on the basis of search material found and seized from the premises of person searched (i.e. Sh. Surender Kumar Jain and Sh. Virender Kumar Jain), and thus, the cognizance of the material could have been taken only by initiation of proceedings under Section 153C of the Act.

2.1 That the assessing officer failed to appreciate that the provisions of section 153C of the Act are non-obstante in cases where assessment is to be initiated on the basis of material seized during the course of search from the premises of third party.

3. Without prejudice to Ground No.2, the reassessment proceedings under section 147 of the Act have been initiated without any new tangible information/material available with the assessing officer and hence, the impugned order is illegal and bad in law.

3.1 That on the facts and circumstances of the case and in law, the reassessment proceedings under section 147 of the Act, having been initiated for the purpose of scrutinizing/investigating the details of the appellant, is illegal and bad in law.

3.2 That on the facts and circumstances of the case and in law, the reassessment proceedings having been initiated without proper sanction under section 151 of the Act, are illegal and bad in law.

4. That the assessing officer erred on facts and in law in making addition of Rs.20,00,000 under section 68 of the Act on account of alleged unexplained share capital received during the year from 4 parties (AD Fin Capital Services Pvt. Ltd., Lotus Realcon Pvt. Ltd, Humtum Marketing Pvt. Ltd. and Shalini Holding Ltd.) holding that the assessee had failed the test of genuineness as per section 68 of the Act.

4.1 That on the facts and circumstances of the case and in law, the assessing officer erred in making the addition while completely ignoring the documentary evidences filed by the appellant fulfilling the ingredients of the provisions of section 68 of the Act.

4.2 That the assessing officer erred on facts and in law in completing the reassessment and making addition without granting any opportunity to the appellant to cross examine the Jain Brothers, in gross violation of the settled principles of natural justice.

5. That the assessing officer erred on facts and in law in making addition of Rs.36,000 treating the same unexplained investment on the ground that it represented commission paid to obtain accommodation entries.

6. That the assessing officer erred on facts and in law in charging interest under section 234B/234D of the Act.”

3. At the outset, we note that in this case, upon assessee's appeal, Id. CIT(A) has noted that assessee has sought withdrawal of the appeal, hence the grounds were dismissed by the Id. CIT (A). Now, the assessee has taken about-turn and wanted to pursue the appeal. In our considered opinion, interest of justice will be served if an opportunity is granted to the assessee. Hence, we remit the issue to the file of Id. CIT (A). Id. CIT (A) is directed to consider the issue afresh after providing an opportunity of being heard to the assessee.

4. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on this 16th day of February, 2024.

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 16th day of February, 2024
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A).
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**