

आयकर अपीलीय अधिकरण  
कोलकाता 'ए' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' 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.: 187/KOL/2021  
Assessment Year: 2011-12**

***Sulochana Sarees Pvt. Ltd.....Appellant  
[PAN: AAOCS 0481 N]***

***Vs.***

***Pr. CIT-1, Kolkata.....Respondent***

**Appearances:**

***Assessee represented by – Sh. Miraj D. Shah, A/R.***

***Department represented by – Sh. S. Datta, CIT (D/R).***

Date of concluding the hearing : December 12<sup>th</sup>, 2023

Date of pronouncing the order : February 29<sup>th</sup>, 2024

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

This appeal preferred by the assessee is against the order passed by Learned Pr. Commissioner of Income Tax (hereinafter referred to as 'Pr. CIT') dated 19.03.2021 for the Assessment Year (in short 'AY') 2011-12.

2. Though the Registry has pointed out that the appeal is time barred by 32 days, however, in view of the decision of the Hon'ble Supreme Court in the case of Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020, the period of filing appeal during the COVID-19 pandemic is to be excluded for the purpose of counting the limitation period. In view of this, the appeal is treated as filed within the limitation period. We find that there was no delay in filing the appeal as per the Hon'ble Supreme Court's order (supra), therefore the appeal is taken for adjudication.

3. The only issue raised by the assessee is against the invalid exercise of jurisdiction by Id. Pr. CIT u/s 263 of the Act thereby revising assessment framed by the Assessing Officer (in short Id. 'AO') vide order dated 21.12.2018 u/s 144 of the Act.

4. The facts in brief are that the assessment was framed u/s 144 read with Section 147 of the Act vide order dated 21.12.2018. Id. Pr. CIT observed on perusal of the assessment records and ITS details that the assessment framed by the AO as stated above is erroneous and prejudicial to the interests of the revenue on two issues namely (i) that Rs. 19,43,047/- interest received from Deepak Baid has not been considered by the AO during the course of assessment proceedings which according to Id. Pr. CIT should have been disallowed and (ii) that the AO had credible information that the assessee was benefitted by an amount of Rs. 16 Lakh by way of accommodation entries. Id. Pr. CIT noted that the assessee has failed to comply with the statutory notices/show cause notices to the assessee by the AO during the assessment proceedings and the AO disallowed only 1.50% as commission income on an amount

of Rs. 6,55,69,000/- thereby adding Rs. 9,83,535/- whereas credible evidences available in the findings suggested that the entire amount of Rs. 6,26,20,000/- should have been disallowed on account of being unexplained cash credit thereby Rs. 6,16,36,465/- remained to be added to the income of the assessee. Ld. Pr. CIT accordingly issued show cause notice u/s 263 of the Act on 15.01.2021 calling upon the assessee to explain as to why the assessment should not be set aside to be framed *de-novo*. The said notice was replied by the assessee following which the issue no. 1 i.e. interest income of Rs. 19,43,047/- was accepted by ld. Pr. CIT as having been correctly assessed by the AO whereas the assessment order was revised so far as the second issue is concerned by directing the AO to frame the assessment afresh.

5. The ld. A/R submitted before us that ld. Pr. CIT has erred in setting aside the assessment framed by the AO wherein a considered view has been taken after examining the evidences such as bank statement of the account of the assessee maintained with the Development Credit Bank, Shakespeare Sarani, Kolkata and the AO after examining all the credits and debits entries in the said statement observed that the total credits in the bank were Rs. 6,25,69,000/- and almost the entire amount has been transferred to various parties through RTGS and cheques and thus, taken possible a view that income has to be assessed on some percentage basis on the gross credits. Accordingly the ld AO applied the rate of 1.50% on the gross credits of Rs. 6,26,20,000/- as the assessee is engaged in the business of providing accommodation entries. In defence of argument the Ld. A.R. relied on the decision of Co-

ordinate Bench of Delhi in the case of ITO vs. M/s Angel Cement Pvt. Ltd. &Ors. In ITA NO. 4691/Del/2016 dated 18.03.2021 and the decision of Hon'ble Allahabad High Court in the case of Prem Castings Pvt. Ltd. vs. CIT [2017] 88 taxmann.com 189. Finally the AR submitted that since the AO has taken a considered and plausible view by assessing the income at the rate of 1.5% of the total amount involved by way of credits in the assessee's bank account with Development Credit Bank, Shakespeare Sarani, Kolkata which was passed on to various parties through RTGS/cheques and therefore, ld. Pr. CIT cannot substitute his view in place of that of the AO's by relying on the decision of Commissioner of Income Tax Vs Gabriel India Ltd.(1993) 203 ITR 108(Bom). Ld. A/R therefore, prayed that the revisionary order u/s 263 of the Act may kindly be quashed.

6. Ld. D/R on the other hand relied on the order of ld. Pr. CIT by submitting that though the assessee is apparently in the business of providing accommodation entries but since the documents were not submitted before the AO nor the assessee disallowance appear in the proceeding therefore, the conclusion taken by the AO to assess the income at the rate of 1.5% clearly attracts the provision of Section 263 of the Act as the assessment framed is erroneous and prejudicial to the interests of the revenue for the reason that the entire amount of credits in the bank account should have been added as unexplained cash credit.

7. After hearing the rival contentions and perusing the material on record, we find that the AO has examined this issue during the course of assessment proceedings after examining the bank

statement of the assessee maintained with Development Credit Bank, Shakespeare Sarani, Kolkata and observed that total credits as appearing in the bank of the assessee were Rs. 6,55,69,000/- which was immediately transferred/transmitted to various parties through RTGS/Cheques and thus the net balance remaining with the assessee is only a very meagre amount in few thousands. We observe from the assessment order that though the assessee did not appear before the AO however, the AO while framing the assessment has taken a possible and plausible view on the basis of bank statement that was available before the AO and recorded a clear cut finding that the assessee is acting as an accommodation entry provider/pass through entity and whatever money is received in the bank account is immediately transferred out to various parties and therefore came to a conclusion that a commission at the rate of 1.5% would be reasonable to be assessed as income and accordingly the assessment was framed. In our opinion, the AO has taken a view which cannot be said to be incorrect on the basis of facts available nor is against any provisions of the Income Tax Act, 1961. The view of the AO finds support from the decision of Co-ordinate Bench of Delhi in the case of *ITO vs. M/s Angel Cement Pvt. Ltd. & Ors. (supra)* wherein the Co-ordinate Bench has held as under:

*“61. The ld. CIT-DR relying upon the order of the Assessing Officer had contended that the assessee herein has availed accommodation entries wherein they have introduced the unaccounted/undisclosed fund into their books of account in the garb of share capital and or loan and advances. However, there is not an iota of material by way of any inquiry or information from Investigation Wing that, firstly, above named assessee companies have been found to be beneficiary of accommodation entry in any search or survey in the case of entry*

operator; and secondly, any inquiry has been made in the case of the assessee companies wherein it has been found that these companies have taken any accommodation entry by rotating their unaccounted money or income. Though there is a rotation/movement of money from one company to another through web of group companies of Bhushan Energy Ltd. and the entities owned by common shareholder, which is a subsidiary flagship Company, Bhushan Steel Ltd. now merged with Tata Steels Ltd. The fund have flown from Bhushan Energy Ltd. through maze of group companies whereby the funds which has been accounted in the books of Bhushan Energy Ltd. have been routed through group companies and finally have been rerouted back into the books of the Bhushan Energy Ltd. The entire chain and link involves actual movement of accounted fund of BEL in the form of share capital and or loan advances into the assessee company herein and subsequent reintroduction of such funds into regular account of BEL to augment its capital base.

67. Thus, it is quite evident that in various chains of links and the flow of the funds, nowhere there are any unaccounted funds of any of the lender companies or if any of the assessee companies which can be said to have been introduced either by the assessee company or by the lender company. The source of the source has been proved at all levels, right from origin of the funds to the final destination stands substantiated and neither there is unaccounted money nor there is any outside entry operator to route the unaccounted funds for making such investments. Although looking to the peculiarity of the facts and circumstances of the case where these companies can be reckoned as conduit entities for rotation of money, but nowhere can it be said that any of the entities have routed their own unaccounted money. This is the precise reason that in most of the cases Ld. CIT Appeals have deleted the addition; and in 3 cases, he has held that they must have received some commission for such rotation of funds, albeit such observation may not have legal and factual legs to stand.”

8. Similarly, the case of the assessee is also finds support from the decision of Hon’ble Allahabad High Court in the case of *Prem Castings Pvt. Ltd. vs. CIT (supra)* wherein the Hon’ble court has held as under:

“One exception where such addition may not be made at the hands of the private limited company may be where such an addition may

*be proposed to be made at the hands of a private limited company at the very beginning i.e., at a time when it may not have conducted any business so as to give rise to any income or money to make such an investment. In that case, addition may be warranted in the hands of the directors etc. However, that is not the case here. No other fact has been pleaded or found to exist as may save the assessee in this case from the addition made under section 68.”*

9. This is it us quite clear that AO has taken a possible view by applying and assessing the income at 1.50% of total credits in the bank account and the ld. Pr. CIT is not allowed to substitute his view in place of AO's view for the reason that he does not agree to AO's view. The case of the assessee is squarely covered by the decision of Bombay High Court in the case of *Commissioner of Income Tax Vs Gabriel India Ltd. (supra)*. Taking into account these facts and circumstances and the ratio laid by various High Courts, we are inclined to quash the order passed by the Pr. CIT u/s 263 of the Act.

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

***Kolkata, the 29<sup>th</sup> February, 2024.***

*Sd/-*

[Sonjoy Sarma]  
Judicial Member

Dated: 29.02.2024

*Bidhan (P.S.)*

*Sd/-*

[Rajesh Kumar]  
Accountant Member

*Copy of the order forwarded to:*

- 1. Sulochana Sarees Pvt. Ltd., GKK/2A, Ground Floor, 209, AJC Bose Road, Kolkata-700 017.**
- 2. Pr. CIT-1, Kolkata.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata