

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Rajesh Kumar, Accountant Member

**I.T.A No.1440/Kol/2023
Assessment year: 2012-13**

**Diamondite Marketing Pvt. Ltd.....Appellant
2, Lal Bazar Street,
Kolkata – 1.
[PAN: AACCH7032G]**

vs.

ITO, Ward-5(1), Kolkata.....Respondent

Appearances by:

Shri Manoj Kataruka, Advocate, appeared on behalf of the appellant.
Shri B. K. Singh, JCIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 28, 2024

Date of pronouncing the order : March 22, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 08.11.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has assailed the order of the CIT(A) in confirming the addition made by the Assessing Officer of Rs.2,44,48,612/- u/s 68 of the Act treating the same as unaccounted income of the assessee. The assessee has assailed the order on merits as well as on the legal issue regarding the validity of the reopening of the assessment u/s 147 r.w.s. 148 of the Act.

3. The brief facts of the case are that the assessee company was formerly known as M/s Humsafar Securities Pvt. Ltd. The assessment of the assessee was earlier framed u/s 143(3) of the Act vide order dated 08.08.2014. Thereafter, the assessment was reopened by the Assessing Officer by way of notice issued u/s 148 of the Act on 31.03.2019 which was apparently after the expiry of four years from the end of the relevant assessment year. The ld. Counsel for the assessee has invited our attention to the copy of the reasons recorded by the Assessing Officer, the relevant part of which is reproduced as under:

“It is revealed from the Bank statement of M/s Sarang Business Ltd. (A/C. No. 01900210009253) and M/s Riverview Securities Pvt. Ltd. A/C. No. 01900210008904 that fund had been transferred to the M/s Humsafar Securities Pvt. Ltd. companies as mention under:

<i>Bank A/c of</i>	<i>Name of the assessee</i>	<i>Amount</i>	<i>PAN</i>	<i>F.Y.</i>
<i>M/s Sarang Business Ltd. A/c. No. 01900210009253</i>	<i>M/s Humsafar Securities Pvt. Ltd.</i>	<i>Rs.37,00,000/-</i>	<i>AABCF8852B</i>	<i>2011-12</i>
<i>M/s Riverview Securities Pvt. Ltd. A/C. No. 01900210008904</i>	<i>M/s Humsafar Securities Pvt. Ltd.</i>	<i>Rs. 207 Lakhs</i>	<i>AABCF8852B</i>	<i>2011-12</i>

I have gone through the above information and the details of the aforesaid information, co-related the same with the ITR furnished and I am satisfied that Rs. 244 lakhs has escaped assessment.”

3.1 The Assessing Officer reopened the assessment and since there was no representation from the assessee, the Assessing Officer made the impugned additions in an ex parte assessment carried u/s 144 of the Act.

4. However, during the appellate proceedings before the CIT(A), the assessee pleaded that the assessee did not receive any such amount alleged in the reasons recorded. Even it was pleaded that there was no failure on the part of the assessee to fully and truly disclose all material facts for its assessment and since the assessment was reopened after the expiry of four years from the end of relevant assessment year, therefore, the same was hit by the 1st Proviso to section 147 of the Act and therefore, the reopening of the assessment was bad in law. It was also submitted before the CIT(A) that the assessee during the course of assessment proceedings had furnished the primary details such as audited accounts along with bank statement and computation of income. That no such amount as alleged by the Assessing Officer was ever received by the assessee in his bank account. That the Assessing Officer has not pointed out any transaction or given any information relating to the aforesaid amount received by the assessee, therefore, it was not possible for the assessee to give any further information in this respect. The ld. CIT(A), considering the above submissions of the assessee, called for remand report from the Assessing Officer. However, in the remand report, the Assessing Officer again mentioned that the assessee has not furnished the relevant documents and he observed that the assessee has received the aforesaid amount in cash. The ld. CIT(A), considering the aforesaid remand report, upheld the addition so made by the Assessing Officer.

5. Before us, the ld. Counsel for the assessee pointing out to the aforesaid reasons recorded by the Assessing Officer has submitted that the assessee has not received any fund as alleged by the Assessing Officer in the reasons recorded. That the Assessing Officer has not mentioned in the reasons recorded regarding the original assessment

framed by the Assessing Officer in the case of the assessee u/s 143(3) of the Act, wherein, the scrutiny of the accounts of the assessee was duly made by the Assessing Officer. It was also pleaded that there was no mention in the reasons recorded of any failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. The ld. Counsel, therefore, has submitted that not only the reopening in this case was bad in law but also the additions made on merits were also not sustainable as the Assessing Officer neither in the original assessment proceedings nor in the remand report has brought any evidence on record that the assessee has received the alleged amount of Rs.2,44,48,612/- from the two parties as alleged. That the assessee cannot prove the negative in any circumstances.

6. The ld. DR, on the other hand, has relied upon the findings of the lower authorities.

7. We have considered the rival contentions and gone through the record. It is the case of the assessee that the assessee has not received any amount either through banking channel or through cash as alleged by the Assessing Officer in the reasons recorded. There is no mention by the Assessing Officer either in the assessment order or in the remand report of any evidence or any such transaction by which the assessee has received money either in the bank account or in cash. The original assessment in this case was made u/s 143(3) of the Act. When the assessee has categorically stated that it had not received any amount from any such party, the burden shifts upon the Assessing Officer to bring on record evidence of any such transaction. The assessee was not expected to prove by any means that the assessee has not received any

such amount. The ld. Counsel for the assessee has relied upon page 48 to 63 of the paper-book, which are the copies of the bank statement, bank ledger for the period from 01.04.2011 to 31.03.2012 to submit that there was no credit entry into the bank account of the assessee during the relevant financial year. The assessee has also placed on record the copies of cash-book at page 64 of the paper-book to submit that even no such cash was entered into the cash-book of the assessee during the financial year 2011-12. The assessee has also referred to the balance sheet to submit that there were no loans in the balance-sheet. That only capital and reserves from share capital was raised, which was assessed to income-tax in original assessment u/s 143(3) of the Act after due verification. The assessee also referred to the name of the shareholders to submit that there was no name mentioned of M/s Sarang Business Ltd. or M/s Riverview Securities Pvt. Ltd. as shareholders and therefore, the assessee proved beyond doubt that the assessee has not done any such transaction with M/s Sarang Business Ltd. or M/s Riverview Securities Pvt. Ltd. as alleged by the Assessing Officer. In view of the above, the revenue has miserably failed to bring any case against the assessee warranting such additions. Even the reopening of the assessment in this case has been made by the Assessing Officer in a mechanical manner on the basis of borrowed satisfaction. The Assessing Officer has neither referred to any bank account of the assessee and neither any entry of transaction etc. In view of this, not only the reassessment is bad in law in this case, but the additions made on merits are also not sustainable. Therefore, the impugned additions are ordered to be deleted.

8. In the result, the appeal of the assessee stands allowed.

Kolkata, the 22nd March, 2024.

Sd/-
[Rajesh Kumar]
लेखा सदस्य /**Accountant Member**

Sd/-
[Sanjay Garg]
न्यायिक सदस्य /**Judicial Member**

Dated: 22.03.2024.

RS

Copy of the order forwarded to:

1. Diamondite Marketing Pvt. Ltd
2. ITO, Ward-5(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches