

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA

डॉ. मनीष बोर्ड, लेखा सदस्य
एवं
श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष

Before

DR. MANISH BORAD, ACCOUNTANT MEMBER
&
SONJOY SARMA, JUDICIAL MEMBER

I.T.A. Nos.: 861 & 864/Kol/2023

Assessment Year: 2014-15

Durgamata Commercial Pvt. Ltd.....Appellant
[PAN: AACCI 2082 H]

Vs.

ITO, Ward-9(1), Kolkata.....Respondent

Appearances:

Assessee represented by: S.K. Pransukha, FCA.

Department represented by: Arun Kumar Meena, JCIT, Sr. D/R.

Date of concluding the hearing : February 7th, 2024

Date of pronouncing the order : April 8th, 2024

ORDER

Per Sonjoy Sarma, Judicial Member:

Both these appeals filed by the assessee pertaining to the Assessment Year (in short 'AY') 2014-15 are directed against separate orders passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by ld. Commissioner of Income-tax (Appeals)- NFAC, Delhi [in short ld. 'CIT(A)'] dated 27.06.2023.

2. The brief facts of the case are that the assessee filed its return of income for the AY 2014-15 by declaring total income of Rs. 1,46,870/-. Subsequently, the case of the assessee was selected for scrutiny under CASS followed by

notices issued u/s 143(2) & 142(1) of the Act. However, in response to the notices, none turned up. Therefore, the Assessing Officer (in short ld. 'AO') framed the assessment u/s 144 of the Act. During the scrutiny proceeding, on verification of the books of accounts and comparison of balance sheet for the AY 2013-14 & AY 2014-15 ld. AO noticed that the assessee had invested in unlisted equity shares to the tune of Rs. NIL and Rs. 2,04,50,000/- respectively. From the facts narrated above he transpires that the assessee company had invested an amount of Rs. 2,04,50,000/- in equity during the year under consideration. But it remains as unexplained on the part of the assessee regarding the nature and source of the investment. Accordingly, he added the income of the assessee u/s 69 of the Act by assessing the total income of the assessee at Rs. 2,05,96,870/-. Aggrieved by the order of the AO, the assessee went into appeal before the ld. CIT(A). However, assessee could not succeed there.

3. Dissatisfied with the appellate order, assessee is now in appeal before this Tribunal raising three grounds of appeal. However, the main grievance of the assessee is regarding ld. CIT(A) confirming the addition made by the AO u/s 69 of the Act in respect of alleged undisclosed investment in the balance sheet amounting to Rs. 2,04,50,000/- in the hands of the assessee.

4. At the time of hearing, the contention of the ld. A/R is that the alleged investments were duly reflected in the balance sheet of the assessee as clearly stated in details of investment in unquoted equity shares forming part of Note no. 4 of the balance sheet which is reproduced as under:

<i>DURGA MATA COMMERCIAL PRIVATE LIMITED</i>			
<i>Details of Investment in Unquoted Equity Shares forming Part to Note 4</i>			
<i>Name of the Company</i>		<i>2013-14</i>	<i>2012-13</i>
		<i>(Rs.)</i>	<i>(Rs.)</i>
<i>Safflower Commercial Pvt Ltd</i>		-	3,500,000.00
<i>Samiksha Tradelink Pvt Ltd</i>		-	1,400,000.00
<i>Bedant Commerce Private Ltd</i>		19,000,000.00	19,000,000.00

<i>Goodpoint Stockist Private Ltd</i>		1,450,000.00	1,450,000.00
<i>Total</i>		20,450,000.00	25,350,000.00

5. The alleged addition made by the AO was coming from earlier year i.e. FY 2012-13. Therefore, the view taken by both the authorities below are not correct. Therefore, the alleged addition made in the hands of the assessee is needed to be set aside by this Tribunal since alleged addition made by the AO on wrong findings.

6. On the other hand, the ld. D/R supported the decision rendered by the authorities below and objected to the prayer made by the ld. A/R of the assessee.

7. We, after hearing the rival submission of the parties and perusal of the material available in the record, we notice that the assessee has made the alleged investment in the FY 2012-13 and in FY 2013-14 it is coming as an opening balance from the earlier year which is clearly reflected from the notes of the balance sheet as furnished by the assessee before us. We, therefore, feel it necessary to set aside the alleged addition sustained by ld. CIT(A) and direct the AO to delete the same. Since the impugned finding given by the AO as well as ld. CIT(A) is not correct in terms of the above, ground no. 1 raised by the assessee is hereby allowed.

8. Ground nos. 2 & 3 are general and consequential in nature, therefore, need not require any adjudication.

9. Similarly, ITA No. 864/KOL/2023 is filed by the assessee challenging the penalty order dated 28.06.2017 regarding the applicability of penalty u/s 271(1)(c) of the Act as imposed by the AO on the ground that the alleged addition made vide assessment order dated 26.12.2016 by imposing penalty of Rs. 66,37,271/- upon the assessee. The order has been challenged by the assessee before ld. CIT(A) but the appeal of the assessee was dismissed. Since, the quantum appeal in ITA No. 861/KOL/2023, we have allowed in favour of the assessee, therefore, consequential penalty as imposed in the case of the

assessee has no legs to stand. Accordingly, consequential penalty order is hereby set aside and the instant appeal of the assessee is hereby allowed.

10. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open Court on 8th April, 2024.

Sd/-

[Manish Borad]

Accountant Member

Dated: 08.04.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Durgamata Commercial Pvt. Ltd., 125/A, Cotton Street, Kolkata-700 007.**
2. **ITO, Ward-9(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

Sd/-

[Sonjoy Sarma]

Judicial Member

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata