

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 634/Kol/2023
Assessment Year: 2014-15

M/s. Manohar Dealcom Private Limited C/o Nigam Centre 155, Lenin Sarani 1 st Floor, Room No. 110 Kolkata- 700013 [PAN : AAFCM8273R]	Vs	Income Tax Officer, Ward - 9(1), Kolkata
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Sunil Surana, A/R
Revenue by :	Shri Arun Kumar Meena, JCIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 07/02/2024
घोषणा की तारीख /Date of Pronouncement: 12/04/2024

आदेश/O R D E R

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter the "ld. CIT(A)") dt. 29/04/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2014-15.

2. The assessee has raised the following grounds of appeal:-

- “1. For that the notice u/s 143(2) of the Act was issued by the Income Tax Officer, Ward 2(2), Kolkata who had no jurisdiction over the case of the assessee and as such the assessment is bad in law.
2. For that Ld. CIT(A) erred in confirming the addition of Rs. 3.86 crore made by the AO u/s 69 in respect of increase in Loans and Advances as compared to preceding financial year in spite of the fact that the -loans were duly recorded in the regular books of account and were advanced out of amount received against sale of disclosed investments.

3. For that the Ld. CIT(A) erred in confirming the disallowance of Rs. 30,335/- made by the Ld. AO being 40% of the expenses incurred by the assessee company during the year merely based upon estimates, surmises and conjectures.

4. For that the assessment order, being passed ex-parte whereby none of the notices issued in course of the assessment proceedings were served upon the assessee since all the notices were sent at incorrect address.

5. For that the appellant craves leave to add, alter or withdraw any ground/s of appeal on or before hearing of the appeal.”

3. Brief facts of the case are that the assessee is a private limited company. Return for Assessment Year 2014-15 furnished on 26/11/2014 declaring income of Rs.1,776/-. Case selected for scrutiny through CASS. Notice u/s 143(2) of the Act issued by the ITO, Ward - 2(2), dt. 18/09/2015 by affixture. Subsequently, notices u/s 142(1) of the Act was also issued but there was no compliance by the assessee. Ld. Assessing Officer based on verification of audited balance sheet noticed that there is a loan and advance of Rs.3,86,00,00/- during the year and in absence of relevant details the Id. Assessing Officer invoked provisions of Section 69 of the Act investment and made addition of Rs.3,86,00,000/-. Further the Id. Assessing Officer observed that the assessee has claimed expenditure of Rs.75,837/- but for lack of verification about the genuineness of the expenditure, *ad hoc* disallowance of 40% was made at Rs.30,335/-. Income assessed at Rs.3,86,32,111/-. Aggrieved the assessee preferred appeal before the Id. CIT(A) and apart from raising grounds on merits also challenged the jurisdiction of the Assessing Officer issuing notice u/s 143(2) of the Act. However, the assessee failed to succeed on any of the grounds.

4. Now, the assessee is in appeal before this Tribunal.

5. The Id. Counsel for the assessee filed a paper book containing 35 pages which includes copy of notice u/s 143(2) of the Act, copy of affixture of notice, audited financial statement and written submissions filed before the Id. CIT(A). The assessee also filed written submission wherein submissions have made regarding validity of the reopening proceedings on the ground that no valid notice u/s 143(2) of the Act was issued by the jurisdictional Assessing Officer. Reliance has been placed on various decisions mentioned in the written submissions. On merits, it is stated that firstly Section 69 of the Act cannot be invoked because the investments are duly disclosed in the audited financial statements and are part of the books of accounts and secondly referring to the balance sheet, it is submitted that there is no new investment during the year and only certain funds which were realized from selling the investments in shares have been utilized for giving loans and advance and no new funds have been received during year.

On the other hand, the Id. D/R vehemently argued supporting the orders of the lower authorities.

6. We have heard rival contentions and perused the material placed before us. First we take up the legal issue raised in Ground No. 1 that the ITO, Ward-2(2), was not having jurisdiction over the assessee for issuing notice u/s 143(2) of the Act. We find that the notice u/s 143(2) of the Act dt. 18/09/2015 issued to the assessee company at its address of 137/12, Narikel Danga, Main Road, Kolkata -11. Since assessee was not available at the given address, notice was served through affixture. Further we notice that vide letter dt. 26/09/2016, the ITO, Ward-2(2) has transferred the records to the ITO, Ward -9(1) having jurisdiction

over the assessee. In the letter dt. 26/09/2016, the ITO Ward-2(2) has referred to CBDT Notification No. SO 2752(E) dated 22/10/2014 and the same provides for the Assessing Officer-wise jurisdiction based on the alphabet and income criteria. Assessee has not disputed the fact that as on the date of issuing notice u/s 143(2) of the Act, the jurisdiction as per the PAN database the jurisdiction vested with the ITO, Ward-2(2), Kolkata. Though, the assessee has claimed that the assessee has changed the address and mentioned it in the income tax return and the Id. Assessing Officer ought to have issued notice on the changed address, we do not find any merit in such contention. The assessee who is obliged to apply for the PAN No. as per the provision of Section 139A of the Act, is further obliged to intimate the Department about any change in his addresses. Section 139A(5) of the Act reads as follows:-

- (5) *Every person shall –*
- (a) *quote such number in all his returns to, or correspondence with, any income-tax authority;*
 - (b) *quote such number in all challans for the payment of any sum due under this Act;*
 - (c) *quote such number in all documents pertaining to such transactions as may be prescribed²⁹ by the Board in the interests of the revenue, and entered into by him: **Provided** that the Board may prescribe different dates for different transactions or class of transactions or for different class of persons:*
³⁰***Provided further** that a person shall quote General Index Register Number till such time Permanent Account Number is allotted to such person;]*
 - (d) ***intimate the Assessing Officer any change in his address** or in the name and nature of his business on the basis of which the permanent account number was allotted to him.*

[emphasis ours]

7. In clause (d) of sub-Section (5), every person is required to intimate the Assessing Officer any change in of his address or in the name and nature of his business. Before us the assessee has neither filed copy of the income tax return nor filed any evidence to prove that the assessee has moved necessary correction statement with NSDL/UTISL

for change in the registered address of the assessee company. In the regime of selecting the case of complete assessment, the computer program used by the Income-tax Department selects the case for scrutiny based on the database and information provided under the system. By default, whenever a case is selected for scrutiny, the address appearing in the PAN database is used for giving notice to the assessee. Merely mentioning the changed address in the income tax return, cannot serve the purpose and only if the assessee files PAN correction statement with the authorities authorised for issuing and correcting PAN details, then only, changed address can appear in the computer system, failing which whatever address is appearing in the PAN database is used for issuing notice. In the instant case, when the case was selected for scrutiny as per the PAN database, by jurisdiction vested with the ITO, Ward -2(2) and he made all necessary efforts to issue the notice and finally issued the notice through affixture. Though, the assessee has mentioned certain discrepancy in the procedure of notice through affixture but the same is not supported by any credible information. Once the case was selected for scrutiny a valid notice was issued by ITO, Ward-2(2), and at a subsequent date i.e., 26/09/2016 for the assessment purpose in compliance to the CBDT Notification No. SO 2752(E) dated 22/10/2014, the case transferred to ITO, Ward-9(1), for framing the assessment. Under these given facts and circumstances, we find that a valid notice u/s 143(2) of the Act was issued and valid assessment u/s 143(3) has been framed by the jurisdictional Assessing Officer. Thus, Ground No.1 raised by the assessee is dismissed.

8. Ground No. 4 is regarding the *ex-parte* assessment order but the same has not been pressed and, therefore, it is dismissed as not pressed.

8.1. Now coming to the merits of the case, we will first take up Ground No. 2 where the addition of Rs.3,86,00,000/- confirmed by the Id. CIT(A) is in challenge before us. The Id. Assessing Officer has made the addition invoking provisions of Section 69 of the Act and the said provision reads as under:-

“69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.”

8.2. On perusal of Section 69 of the Act, we notice that the same covers investment which are not recorded in the books of accounts. Now in the instant case, the Id. Assessing Officer has made the alleged additions based on the figures appearing in the audited balance sheet. It is an admitted fact that the Private limited companies are required to get their books of accounts audited irrespective of any income criteria and the copy of such audited balance sheet are to be filed both with the Ministry of Corporate Affairs as well as the Income-tax Department. Now, the source of the addition taken up by the Assessing Officer is from schedule (vii) under the head short term loans and advances. For the preceding financial year 2012-13, only sum of Rs.50,000/- appearing under this head but during financial year 2013-14, the amount has increased to Rs.3,86,50,000/-. So there is a net increase of Rs.3.86 Crores, under the head short term loans and advances from preceding year to

current year. On the very same page of the audited balance sheet which is appearing at page 10 of the paper book, we notice that under the head 'other investments', as on 31/03/2013, there was a balance of Rs.12,15,50,000/- but the same has scaled down to Rs.8,29,00,000/- as on 31/03/2014. So, there is a decrease of Rs.3,86,50,000/- and on the other hand, short term loans and advances increased by Rs.3,86,00,000/- . So the source of alleged increase in loans and advances is discernible from the balance sheet itself which is on account of sale of investment and utilizing the funds from such sale of investment for the purpose of giving short term loans and advances. Apart from this, there is no fresh share capital or share premium received during the year.

9. We, therefore, find that firstly it is not a case of unexplained investment because the entries are duly recorded in the books and, therefore, invoking the provisions of Section 69 of the Act is in itself bad in law and secondly, the alleged increase in the short term loans and advances by Rs.3,86,00,000/- is duly explained from the fact that the assessee has sold the investments held by it in the preceding financial year. Therefore, since the source of investments is explained being part of the audited balance sheet and secondly since the provision of Section 69 of the Act are not applicable in the instant case, we set aside the finding of the Id. CIT(A) and delete the addition of Rs.3.86 Crores made u/s 69 of the Act. Accordingly, Ground No. 2 raised by the assessee is allowed.

10. Ground No. 3 is regarding estimated disallowance @ 40% at Rs.30,335/-. Considering the fact that the assessee has very little revenue from operation and the major amount of expenditure is salary

at Rs.36,000/- and other expenses of rs.39,837/- for which details are available at page 12 of the paper book and all these details being taken up from the regular books of accounts maintained, we fail to find any merit in the *adhoc* disallowance made by the Assessing Officer and same deserves to be deleted. Accordingly, finding of the Id. CIT(A) is reversed and, Ground No. 3 raised by the assessee is also allowed.

11. Ground No. 5 is general in nature.

12. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Court on 12th April, 2024 at Kolkata.

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 12/04/2024

**SC Sarma*

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
 आयकर अपीलीय अधिकरण
 ITAT, Kolkata