

| आयकर अपीलीय 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. 907/Kol/2023
Assessment Year: 2019-20

Deputy Commissioner of Income Tax, Central Circle -2(3), Kolkata	Vs	Merlins Merlin House Samghu Nath Pandit Street Bhowanipore Kolkata - 700020 [PAN : AATFM9627P]
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri A.K. Tulsyan, FCA
Revenue by :	Shri Rakesh Kumar Das, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 06/02/2024
घोषणा की तारीख /Date of Pronouncement: 02/05/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the revenue against the order of the learned Commissioner of Income tax (Appeals) - 20, Kolkata (hereinafter the "ld. CIT(A)") dt. 02/06/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2019-20.

2. The Registry has pointed out that there is a delay of 28 days in filing of this appeal. There is a petition for condonation of delay stating therein, the reasons for the delay. On perusal of the petition, we are convinced that the revenue was prevented for reasonable cause from filing this appeal in prescribed time limit. Accordingly, we condone the delay and admit the appeal for hearing on merits.

3. The revenue has raised the following grounds of appeal :-

“1. Ground that on the facts and circumstances of the case, the ld. CIT(A) erred to direct the AO to delete the addition of Rs.13,01,00,000/- on account of unsecured loan taken from various loan creditors as mentioned in the order treating the same as unexplained cash credit u/s 68 of the Act.

2. That the department craves leave to add, alter, or modify any grounds of appeal in the course of appellate proceedings.”

4. At the outset, the ld. Counsel for the assessee submitted that the appeal of the revenue deserves to be dismissed in view of the decision of this Tribunal in the assessee’s own case for Assessment Year 2017-18 in IT(SS)A No. 136/Kol/2023, wherein also similar type of addition was made for the unsecured loan received from partners and this Tribunal on finding that the assessment year fell under the category of completed assessment and no incriminating material was found, deleted the addition in view of the judgment of the Hon’ble Supreme Court in the case of *Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd.* reported in [2023] 149 taxmann.com 399 (SC).

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

5. We have heard rival contentions and perused the material placed on record. We observe that, search was conducted at the assessee’s premises on 18/12/2020. Regular return was filed within the due date prescribed u/s 139(1) of the Act. Case not selected for scrutiny by way of issuing showcause notice u/s 143(2) of the Act upto dt. 30/09/2020. However, in the proceedings u/s 153A of the Act, addition has been made u/s 68 of the Act, treating the loan contribution by partners as unexplained to the tune of Rs. 13,01,00,000/-. Undisputedly, M/s.

Tribune Commerce Pvt. Ltd., M/s. Planet Commercial Pvt. Ltd. and M/s. Zoom Vanijya Pvt. Ltd., are partners in the assessee company and they have in total contributed Rs.13.01 Crores in the assessee firm in the impugned assessment year. Now, the information about the alleged sum was duly appearing in the audited financial statement which was forming part of the income tax return. It is thus, an admitted fact that the impugned addition has only been made on the basis of post search enquiry and no reference has whatsoever been made to any incriminating material found during the course of search. We find that under similar set of facts and circumstances, addition in the hands of the present assessee was made for Assessment Year 2017-18 and since the assessment year fell under the category of completed and unabated Assessment Year, the Id. CIT(A) deleted the addition on observing that it is not based on any incriminating material, and this finding of the Id. CIT(A) for Assessment Year 2017-18 was confirmed by this Tribunal vide IT(SS)A No. 136/Kol/2023, dt. 20/02/2024 placing reliance on the judgment of the Hon'ble Apex Court in the case of *Abhisar Buildwell (P.) Ltd. (supra)*. Relevant finding of this Tribunal is appearing at para 13 and 14 of the order dt. 20/02/2024, which reads as under:-

"13. From perusal of the above finding of this Tribunal considering the ratio laid down by the Hon'ble Apex Court in the case of Abhisar Buildwell Pvt. Ltd. (supra) and also considering the facts that income-tax returns have been filed for the assessment years in question u/s 139(1) of the Act and that no assessment was pending as on the date of search, the assessment years in question are completed/concluded assessments and there being no reference to any incriminating material showing escapement of income as discussed above, we find that the impugned additions in the case of assessee namely, Merlin Infra Project Private Limited, Merlin Acropolis Projects Private Limited, Merlin Projects Limited, Bengal Merlin Housing Ltd., Kolkata, are only towards unsecured loans taken towards various group concerns and all these unsecured loans are forming part of the regular books of accounts duly audited and duly filed before the revenue authorities with the return u/s 139(1) of the Act. Therefore, the addition made by the

Assessing Officer in the hands of these assesseees are merely based on the post search enquiry. As far as the assessee, M/s. Merlins Kolkata, is concerned, the addition has been made towards the funds received from the partners of the assessee firm and the source of such funds with the alleged three partners were from the other group concerns. Thus, it is an admitted fact that the alleged cash creditors referred to by the Assessing Officer in all the instant appeals are group concerns and the alleged have been duly accounted for in the regular books and, therefore, since the seized documents referred in the assessment order is not falling in the category of incriminating material, the ld. Assessing Officer has erred in assuming jurisdiction u/s 153A/143(3) of the Act and, therefore, has rightly quashed the assessment proceedings u/s 153A/143(3) of the Act treating them as bad in law. Thus, the impugned additions have been rightly deleted by the ld. CIT(A) on legal grounds.

14. So far as the quantum additions are concerned, even though the ld. CIT(A) has not dealt with the quantum additions being academic and has since quashed the assessment orders placing reliance on the judgment of the Hon'ble Apex Court in the case of Abhishar Buildwell Pvt. Ltd. (supra), we have perused the details filed by the assessee before us. On going through the said details we notice that the alleged unsecured loans in the case of assesseees, namely, Merlin Infra Project Private Limited, Merlin Acropolis Projects Private Limited, Merlin Projects Limited, Bengal Merlin Housing Ltd., Kolkata, are from group concerns having common directors and are regularly assessed to tax and books of accounts are regularly audited, financial statements also stands filed along with income tax return as well as with the Ministry of Corporate Affairs and all have duly replied to notice u/s 133(6) of the Act. Therefore, identity and creditworthiness of the alleged cash creditors and genuineness of the transactions is not in dispute and also the Assessing Officer has not brought any material on record indicating any discrepancy in the records filed by the assessee to explain nature and source of alleged sum. Therefore, no addition was called for u/s 68 of the Act in case of all these assessee(s) as the nature and source of alleged sum stands explained. So far as the assessee, namely, M/s. Merlins Kolkata, the alleged sum has been received from its own partners. These partners are part of the partnership firm for past many years. Therefore, identity and genuineness of the transactions cannot be disputed. So far as the creditworthiness is concerned material has been placed before us to show that the alleged sum which has been received from the partners was having nexus with the funds received from the alleged partners from other group concerns from the sale proceeds of the assessee. As such the creditworthiness is also established. Thus, even on merits, no addition was called for u/s 68 of the Act in the case of M/s. Merlins Kolkata, also. Consequently, the disallowance for interest expenditure claimed on the alleged sum also stands deleted. Further the addition for unexplained expenditure alleged to have been incurred for arranging the accommodation entries also deserves to be deleted as the loans/capital contribution are genuine. Thus, even on merits, revenue fails to succeed. Thus, all the grounds raised by the revenue are dismissed."

6. Taking consistent view with that of the decision of this Tribunal in assessee's own case for Assessment Year 2017-18 in IT(SS)A No.

136/Kol/2023 (*supra*) and respectfully following the decision of the Hon'ble Apex Court in the case of *Abhisar Buildwell (P.) Ltd. (supra)*, we are of the view that no addition u/s 68 of the Act is called for the impugned Assessment Year. Thus, no interference is called for in the finding of the Id. CIT(A). Ground of appeal No.1 raised by the revenue is dismissed.

7. In the result, appeal of the revenue is dismissed.

Order pronounced in the Court on 2nd May, 2024 at Kolkata.

Sd/-

(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-

(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 02/05/2024

SJS

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