

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 929/Kol/2023
Assessment Year: 2012-13

Ganesh Steel & Alloys Ltd. (PAN: AABCG 1420 G)	Vs.	DCIT, Circle-1(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	29.05.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	11.06.2024
For the Appellant/ निर्धारिती की ओर से	Shri Sunil Surana, A.R
For the Respondent/ राजस्व की ओर से	Shri B. K. Singh, JCIT, Sr. D.R.

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 24.08.2023 for the AY 2012-13.

2. In ground no. 1 and 2 the assessee assailed the order of Ld. CIT(A) upholding the order of AO wherein the AO has invalidly reopened the assessment u/s 147 of the Act.

3. Facts in brief are that the assessee company filed return of income on 28.09.2012 declaring total income of Rs. Nil under the normal provision of the Act. The said return was processed u/s 143(1) of the Act 26.11.2013. Thereafter the case of the assessee was reopened u/s 147 of the Act on the ground of bogus billing in the guise of purchases to the tune of Rs. 38,75,000/- from M/s Chakradhari Industries. During the year, the notice u/s 148 was issue don 31.03.2019 which was complied with by the assessee by filing return of income on 29.11.2019 returned in the same income as filed in the original return of income. Finally in para 3.1. on the last line the AO noted that the assessee has received Rs. 38,75,000/- during the FY 2011-12 from M/s Chakradhari Industries and finally addition was made u/s 69C of the Act on account of bogus expenditure to the tune of Rs. 47,03,192/- in the assessment framed u/s 147 read with Section 143(3) of the Act dated 27.11.2019.

4. The Ld. CIT(A) upholding the reopening of assessment on the legal issue of validly reopening the assessment as well as upholding the addition u/s 69C of the Act.

5. The Ld. A.R vehemently submitted before the Bench that the reopening has been made in gross violation of the provision of Act and therefore is invalid and so is the assessment framed u/s 147 read with Section 148 of the Act. The Ld. A.R while arguing on the first limb of his arguments submitted that the notice u/s 143(2) was issued and assessment framed by DCIT, Circle-3(1), Kolkata whereas the return of income was filed at total income of Rs. Nil. Therefore the jurisdiction to issue the notice and frame the assessment was vested with ITO and not the DCIT. The Ld. A.R therefore contended that in view of Circular issued by CBDT on the pecuniary jurisdiction, the assessment framed by AO u/s 147 read with 143(3) of the Act was bad in law and may be quashed. In defense of arguments the Ld. A.R relied on the decision of Co-ordinate Bench in the case of Subhash Sharma vs. ACIT in ITA Nos. 1099 & 1100/Kol/2023 for AY 2012-13 and 2013-14 dated 04.03.2024 wherein the issue has been decided in favour of the assessee on the pecuniary jurisdiction. Similarly the A.R has relied on the decision of Co-ordinate Bench in the case of Raghavendra Mohta vs. ACIT in ITA NO. 2416/Kol/2017 dated 08.04.2024. Arguing

the second limb of argument, the Ld. A.R submitted that the reasons were recorded u/s 148(2) of the Act at the time of re-opening the assessment wherein the AO noted that the assessee has received Rs. 38,75,000/- from shell entities. The Ld. A.R by referring to the assessment order stated that in the reasons recorded the AO stated that the assessee has received Rs. 38,75,000/- from M/s Chakradhari Industries whereas the assessee has not received any such sum from the said party. In fact the assessee has procured raw material from the said party amounting to Rs. 47,03,192/- against which the assessee has made a payment of Rs. 38,75,000/- during the year and remaining amount of Rs. 8,28,192/- was outstanding as on 31.03.2012. Finally the AO made addition on account of bogus purchases u/s 69C of the Act in the assessment framed. The Ld. A.R contended that since the addition was not made with respect to the issues which were the subject matter of the reasons recorded u/s 148(2) of the Act ,therefore no other addition can be made in the assessment so framed by the AO . The Ld. A.R in defense of arguments relied on the decision of Hon'ble Calcutta High Court in the case of M/s Infinity Infotech Parks Ltd. in ITAT No. 60 of 2014, GA No. 1736 of 2014 and also on the decision of Co-ordinate Bench in the case of Artex Property Consultants Pvt. Ltd. vs. ITO in ITA No. 798/KOI/2023 dated 16.10.2023 and in the case of Babita Devi Kajoria vs. ITO in ITA No. 54/Kol/2020 dated 22.12.2022. The Ld. A.R submitted that the Hon'ble Calcutta High Court while passing the decision, has followed the decision of Hon'ble Bombay High Court in CIT Vs. Jet Airways India Ltd. in 331 ITR 236 (Bom). The Ld. A.R therefore prayed that even on the second limb , the assessment so framed is invalid and may be quashed. The Ld. A.R arguing the case of third limb submitted that the addition in this case has been made by AO with total non-application of mind as the addition has been made in respect of bogus purchases u/s 69C of the Act. The ld AR submitted that the said provision are applicable only to unexplained expenditure where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the AO, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such

financial year . But in the present case, the Ld. A.R argued that the purchases were duly recorded in the books of account and the source of said purchases was also duly disclosed by the assessee in the books of accounts. Therefore the AO has grossly erred in invoking the provision of Section 69C of the Act. The order passed by AO is invalid in the eyes of law and may be quashed on this score as well. The Ld. A.R while arguing the fourth limb of his arguments ,submitted that the assessment order framed by the AO does not bear any DIN which is mandatory requirement under the Act. The Ld. A.R contended that the assessment framed is invalid in view of the circular No. 19 of 2019 dated 14.08.2019 issued by CBDT. The Ld. A.R in defense of arguments relied on the decision of Hon'ble Bombay High Court in the case of Hexaware Technologies Ltd. vs. ACIT in WP no. 1778 of 2023 dated 03.05.2024 wherein it has been provided that the provision of DIN has to be strictly followed as per instruction of CBDT. The Ld. A.R further submitted that though the issue of DIN has been stayed by the Hon'ble Apex Court but that does not mean that it is a declaration of law but is only binding upon the parties to the said proceedings and at the same time such interim order does not destroy the binding effect of the judgment of the High Court as a precedent because while granting the interim order, the Hon'ble Apex Court had no occasion to lay down any proposition of law inconsistent with the one declared by the High Court. The Ld. A.R relied on the decision of Hon'ble Calcutta High Court in the case of Pijush Kanti Chowdhury vs. State of West Bengal and Ors. Dated 14.05.2007 equivalent citation [2007] 2 CALLT 577 (HC)/ 2007 (3) CHN 178. The Ld. A.R therefore pleaded that on all the four limbs of the argument of the assessee, the assessment framed by the AO is bad in law and may kindly be quashed.

6. The Ld. D.R on the other hand relied heavily on the order of authorities below by submitting that the re-opening was made on the basis of specific information that there was some wrong doings by the assessee. The Ld DR submitted that the correct picture will only come out after the investigation/examination of various evidences are carried out during assessment proceedings. Therefore to say that there was no addition

by the AO of the issue which was subject matter of the reasons recorded is wrong. The Id DR submitted that the addition was made which was connected to the reasons recorded. Similarly was the position with regards to addition made u/s 69C as the assessee could not submit the satisfactory explanation. The Id DR therefore prayed that the appeal of the assessee may be dismissed.

7. After hearing the rival contentions and perusing the material on record, we find that the assessee has advanced four alternate arguments claiming the assessment framed by the AO to be invalid on each one of them. One such argument advanced in respect of non-making of addition in the assessment framed qua the issue which was the subject matter of the reasons recorded u/s 148(2) of the Act and the addition was made on different count altogether. The undisputed facts are that the case of the assessee was reopened u/s 147 read with 148 of the Act after recording reasons u/s 148(2) that the assessee has taken accommodation entries of Rs. 38,75,000/- from shell entities namely M/s Chakradhari Industries Ltd. during the year. However, as a matter of fact, we note that the assessee has not received any money from the said party. We note that the assessee has made purchases of raw material from the said party aggregating to Rs. 47,03,192/- during the year against which the aggregate payments of Rs. 38,75,000/- was made to M/s Chakradhari Industries Ltd. and remaining balance of Rs. 8,28,192/- was shown as outstanding as on 31.03.2012. Thus, it is clear from the above facts that no addition has been made for issue recorded in the reasons u/s 148(2) and therefore, no other addition can be made by the AO in the assessment so framed. On this score, we are inclined to hold that the assessment framed by the AO is invalid and cannot be sustained. The case of the assessee finds support from the decision of Hon'ble Calcutta High Court in the case of M/s Infinity Infotech Parks Ltd. (supra) and also on the decision of Co-ordinate Bench in the case of Artex Property Consultants Pvt. Ltd. vs. ITO (supra) and in the case of Babita Devi Kajoria vs. ITO (supra). We also note that the Hon'ble Calcutta High Court while passing the decision, has followed the decision of Hon'ble Bombay High Court in CIT Vs. Jet Airways India Ltd. in 331 ITR 236 (Bom).

7.1. Similarly we note that the AO has addition u/s 69C of the Act in respect of bogus purchases however the provisions of section 69C are applicable only to unexplained expenditure where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the AO, satisfactory, the amount covered by such expenditure or part thereof, may be deemed to be the income of the assessee for such financial year. But this is not the case before us, the assessee has duly disclosed the total purchases of books of account and the payments made to M/s Chakradhari Industries Ltd. were also out of books of account with explained sources. Therefore the source of expenditure was also fully explained and even on this count, the addition made by AO is wrong and cannot be sustained. In view of the above facts and circumstances, we are inclined to set aside the order of Ld. CIT(A) and quash the assessment framed by the AO u/s 143(3) read with Section 147 as without jurisdiction.

8. We have allowed the appeal of the assessee on legal issues and the grounds raised on merit are not being decided at this stage and are being left open to be decided in future if need arises for the same.

9. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 11th June, 2024

Sd/-

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Judicial Member/न्यायिक सदस्य

Sd/-

(Rajesh Kumar/राजेश कुमार)

Accountant Member/लेखा सदस्य

Dated: 11th June, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Ganesh Steel & Alloys Ltd., 3rd Floor, Sathi Chambers 14, N S Road, Kolkata-700001
2. Respondent- DCIT, Circle-1(1), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata