

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

ITA NO.4443/MUM/2023
Assessment Year : 2017-18

ITO -11(1)(1),Mumbai
Room No.201,
Aaykar Bhavan, M.K. Road,
Mumbai – 400 021

- Appellant

Vs.

Sateri Constructions Pvt. Ltd.
6/A, Shaikh Mumtaj Chawl,
JV LK Road, Jogeshwari East,
Mumbai – 400 060.
PAN:AATCS- 6500-P

- Respondent

Appellant by : Ms. Sujatha Iyengar, Sr.AR
Respondent by : Shri Satyaprakash Singh

Date of Hearing : 22/05/2024
Date of Pronouncement : 18/06/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The revenue has filed this appeal challenging the order dated 09-10-2023 passed by learned CIT (A), NFAC, Delhi and it relates to the assessment year 2017-18. The revenue is aggrieved by the decision of learned CIT (A) in deleting the addition of Rs.4.35 crores made by the AO under section 69A of the Act.

2. The facts relating to the above said issue are discussed in brief. It was noticed that the assessee has deposited cash into his bank accounts aggregating to Rs.4,34,50,000/- during demonetization period, which consisted of deposits made in Kotak Mahindra bank amounting to Rs.2,19,50,000/- and in State bank of India amounting to Rs. 2,15,00,000/- . The assessing officer asked the assessee to explain the sources of the

above said deposits made by it. It was submitted that the above said amount was received as advance from a party named "M/s. Bagla International Private Limited" against booking of flats in a project developed in MIDC, Andheri by a concern named "Bindra Sateri Construction", which is a joint venture project of assessee and M/s Bindra Construction. In support of the same the assessee furnished address and PAN number of the above company.

3. Accordingly, the assessing officer issued notice under section 133 (6) of the Act to M/s Bagla international P Ltd, but it was returned as "unclaimed". When this fact was pointed out, the assessee submitted that M/s. Bagla International P Ltd is under liquidation. Hence the assessing officer issued notices to the official liquidator and also the directors of M/s. Bagla international P Ltd. However there was no response from any of them. Accordingly, the assessing officer took the view that the explanations furnished by the assessee with regard to the sources of deposits are not supported by any credible evidence. Accordingly he assessed the deposit amount of Rs.4,34,50,000/- as unexplained income of the assessee under section 69A of the Act.

4. Before learned CIT(A), the assessee submitted that it has furnished copy of confirmation received from M/s Bagla International P Ltd, its address and PAN number. It was submitted that the above said amount was repaid by way of cheque. It was also submitted that the assessee has paid service tax on the booking advance received from the above said party. Accordingly, the assessee contended that it has proved the receipt of cash from the above said concern and accordingly, explained the sources for the amount deposited into the banks. It was contended that the assessing officer has not brought on record any material to disprove the evidence furnished by the assessee. Convinced with the contentions of the assessee, the learned CIT(A) deleted the impugned addition. Aggrieved the revenue has filed this appeal

5. We heard rival contentions and perused the record. We noticed that the assessee has claimed to have furnished confirmation letter received from M/s Bagla International private limited. We notice that the said confirmation was in the form of attestation of the Ledger account copy as available in the books of the assessee. The said attestation consisted of round seal of M/s Bagla International P Ltd and initial of someone. The name of the person who attested the document is not available. Further, it is the Ledger account copy of M/s Bagla International P Ltd as available in the books of the assessee, i.e., its own document of the assessee. Further, it is claimed that the booking amount has been repaid by way of cheques and in this regard, the assessee has furnished copies of its bank accounts. Thus, both the documents furnished by the assessee belong to the assessee only, i.e., no document belonging to M/s Bagla International P Ltd was furnished.

6. However, the important point which remained unaddressed is that the notices issued by the assessing officer under section 133(6) of the Act to the above said concern was not responded. Since it was claimed that the above said concern was under liquidation, the AO issued notices to official liquidator and directors of the above said company, but they also did not respond. Thus, we notice that the claim of receipt of cash from M/s Bagla International P Ltd was not proved with any third party evidences nor it was confirmed by the above said concern.

7. Further, the explanation of the assessee itself, in our view, defies logic and it is beyond the scope of human probabilities. It is not explained as to how above said company was having so much cash in its hand. The assessee has not brought on record any evidence to show that the above said company was in possession of cash in its books of account on the days when they were given to the assessee. This doubt gets strengthened by the fact that the above said company was claimed to be under liquidation. Further, the question that remained unanswered is that - How a company

under liquidation could possess so much cash of Rs.4.35 crores in hand? Even if it is assumed that the above said company was having cash, it is not understandable as to how a limited company would give money by way of cash for booking of flats?

8. Accordingly, we are of the view that the assessee cannot be said to have discharged its burden placed upon it under section 69A of the Act. It is imperative for the assessee to produce credible evidences obtained from M/s Bagla International P Ltd to prove the availability of cash with it on the days when it was claimed to have been paid to the assessee. Further, considering the quantum of cash payment, it is also necessary for the official liquidator to respond to the notice issued by the AO u/s 133(6) of the Act and confirm the transactions with credible evidences.

9. Under these set of facts, we are of the view that the assessee may be provided with one more opportunity to prove its claim of receipt of money from M/s Bagla International P Ltd. Accordingly, we set aside the order passed by Ld CIT(A) and restore all the issues to the file of the assessing officer for examining them afresh. The assessee is also directed to furnish proper and credible evidences in support of its explanations. The AO may conduct necessary enquiries in this regard. After affording adequate opportunity of being heard, the AO may take appropriate decision in accordance with law.

10. In the result, the appeal filed the revenue is treated as allowed.

Order pronounced in the open court on 18th June , 2024.

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Mumbai, Date : 18th June, 2024

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Vm

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "G" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai