

आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य
एवं
श्री संजय अवरथी, लेखा सदस्य
के समक्ष
Before

**SRI SANJAY GARG, JUDICIAL MEMBER
&
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No.: 902/KOL/2016
Assessment Year: 2008-09**

***Life Style Foundation Pvt. Ltd.....Appellant
[PAN: AABCL 4118 Q]***

Vs.

ITO, Ward-6(3), Kolkata.....Respondent

Appearances:

Assessee represented by: Ajit Chorabia, AR.

***Department represented by: Abhijit Kundu, CIT DR on behalf of P.P.
Barman, Sr. DR.***

Date of concluding the hearing : May 30th, 2024

Date of pronouncing the order : July 9th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

In this case the primary grievance of the appellant pertains to the action of the Assessing Officer (hereinafter referred to as ld. 'AO') in making an addition of Rs. 4,83,00,000/- u/s 68 of the Income Tax Act, 1961 (in short the 'Act') on account of subscription of share capital by the assessee, which was allegedly found to be non-genuine by the ld. AO. This assessment order dated 29.03.2014 itself is a result of an action u/s 263 of the Act by ld. Pr. CIT, who had set aside an earlier order dated 30.04.2010. It is seen that the primary challenge is regarding this action of the AO and it is seen that there

are as many as three grounds of appeal with several sub-parts to the same. However, vide submission received on 12.01.2018, the appellant has tendered additional evidences under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1962 as under:

“4. Additional Evidences before the Hon’ble ITAT:

4.1. It would be in the interest of substantial justice that the following facts and additional evidences be considered:

4.1.1. Mr. Parasmal Surana (PAN No. AAUPS6003K), Director of the Appellant Company has

disclosed the said amount of Rs. 4,83,00,000/- representing the share capital of the Appellant as his undisclosed income, under the Income Disclosure Scheme, 2016 (“Scheme”) and paid the applicable tax, surcharge and penalty aggregating to Rs. 2,17,35,000/- as stipulated under the Scheme.

4.1.2. Your Appellant herewith furnishing the following additional evidences:

a) Form of Declaration under section 183 of the Finance Act, 2016, in respect of the Income Declaration Scheme, 2016 in Form 1 as Annexure 1.

b) Acknowledgement of the declaration in Form 2 as Annexure 2.

c) Intimation of the payment of taxes in Form 3 along with tax payment challans as Annexure 3.

d) Certificate of declaration under section 183 of Finance Act, 2016 in respect of Income disclosure Scheme 2016 in Form 4 issued by the Principle Commissioner I Commissioner of Income-tax - 9 as Annexure 4.

4.1.3. Further your Appellant hereby duly furnishes a sworn affidavit to bring out the above facts, as required under rule 10 of the Income tax (Appellate Tribunal) Rules, 1963. The copy in original of the sworn affidavit is enclosed as Annexure 5.

5. Reasons for producing the additional evidences before the Hon’ble ITAT:

5.1. The Principle Commissioner of Income tax - 9, has given form of acceptance of disclosure of income in Form 4 only on 5th October 2017, the Appellant was not in position to furnish the above evidences either before the Ld. AO during the assessment proceedings or CIT(A) during the appeal proceedings.

6. Prayer:

6.1. *The Appellant prays that in the interest of substantial justice, the additional evidences filed by the Appellant be kindly admitted and adjudicated upon and oblige.*

6.2. *Further the Appellant prays your honor that, pursuant to declaration of the alleged income of the Appellant as the income of Mr. Parasmal Surana, Director of the Appellant, the identity, creditworthiness, and genuineness of the Share Capital of the Appellant is thus established and therefore the addition under section 68 may kindly be dropped and appeal of the Appellant be allowed.”*

1.1. In light of additional evidences filed, the original grounds of appeal are not specifically adjudicated. It is also seen from the records that the appellant had earlier moved a petition for transfer of appeal to an appropriate Assessing Officer in Chennai as the registered office was shifted from West Bengal to the state of Tamil Nadu.

2. At this juncture it may be pertinent to recapitulate the brief facts of the case. First assessment was completed u/s 143(3)/147 of the Act on 30.04.2010. Subsequently, ld. CIT(A) initiated proceedings u/s 263 of the Act and vide order dated 30.03.2013 set aside the order of ld. AO and directed for fresh assessment after examining the identity, creditworthiness and the genuineness of the shareholders who had infused share capital in the appellant company. Following this order, the ld. AO passed an order on 29.03.2014 after adding Rs. 4,83,00,000/- representing the entire share capital, after doubting the genuineness of the said transactions. It is seen that the appellant was not successful even at the first appellate stage and thereafter he approached the ITAT.

2.1. It has been averred before us that Mr. Parasmal Surana, director of the appellant company, has disclosed the entire impugned amount (Rs. 4,83,00,000/-) as his undisclosed income under the Income Disclosure Scheme, 2016 and also paid the tax, surcharge and penalty aggregating to Rs. 2,17,35,000/-. Before us the form of declaration u/s 183 of Finance Act, 2016, acknowledgement of the said declaration and intimation of the payment of taxes in Form-3 have been filed. It is seen from the records that the

certificate of declaration u/s 183 of Finance Act, 2016 in Form-4, as issued by the principal Commissioner, has also been filed.

2.2. The ld. D/R also had an opportunity to examine the documents placed before us and mentioned that the said contention of the appellant could be verified by the AO having jurisdiction at present.

2.3. The ld. A/R has averred that considering the disclosure made by the appellant and the fact that a certificate has been duly issued in this regard, the addition made cannot stand any further.

3. We have examined the documents placed before us, the averments of both ld. A/R and ld. D/R as well. It is felt that this is an old matter which has been pending for one reason or another and it will be in the fitness of things to accept the prayer of the appellant and direct the ld. AO to verify the aforesaid contention of the assessee and genuineness of documents and thereafter grant relief as would be due, as per law, to the appellant.

4. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 9th July, 2024.

Sd/-

[Sanjay Garg]

Judicial Member

Dated: 09.07.2024

Bidhan (P.S.)

Sd/-

[Sanjay Awasthi]

Accountant Member

Copy of the order forwarded to:

- 1. Life Style Foundation Pvt. Ltd., 1, Chandney Chawk Street, B- Block, 1st Floor, Suit No.7, West Bengal, 700072.**
- 2. ITO, Ward-6(3), Kolkata.**
3. CIT(A)-6, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata