

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. No.1371/Kol/2023
Assessment Years: 2010-11

M/s Kuber Tie-up Pvt. Ltd.....Appellant
16, Gandhi House,
Ganesh Chandra Avenue,
8th Floor, Kolkata-13.
[PAN: AACCK6127H]

vs.

ACIT(OSD), Ward-2(3), Kolkata..... Respondent

Appearances by:

Shri Sanket Joshi, CA, appeared on behalf of the assessee.

Shri Sailen Samadder, Addl. CIT- Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : June 05, 2024

Date of pronouncing the order : July 30, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 25.05.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The appeal is time-barred by 142 days. A separate application for condonation of delay has been filed, wherein, it has been pleaded that the impugned order of the CIT(A) was not physically served upon the assessee. The order was sent on email, however, the said email was not noticed by the assessee, therefore, the assessee did not come to the knowledge of the passing of the impugned order of the CIT(A). The passing of the order of the CIT(A) came to the knowledge of the assessee only on October 2023. Thereafter, the assessee regularly approached his consultant to file the appeal, however, the consultant was busy in return filing activity and did not file the appeal. Thereafter, the assessee

appointed another counsel and immediately filed the present appeal. That the delay in filing the appeal was not intentional. It has been further submitted that the department has raised illegal demand of Rs.100 lakh, which is beyond the financial capacity of the assessee company. That if the assessee is not allowed to contest on merits, serious prejudice will be caused to the rights of the assessee and the assessee will suffer irreparable loss. Considering the above submissions made in the application of the assessee, the delay in filing the present appeal is hereby condoned. The assessee in this appeal has taken the following grounds of appeal:

“1. The assessee submits that the assessee had specifically requested the AO vide response dated 11.04.2018 to provide the reasons for reopening recorded in this case, however, the said reasons were never confronted to the assessee till the completion of the reassessment proceedings in spite of such specific request and hence, the reassessment order passed u/s 144 r.w.s. 147 without following the procedure laid down by Honorable S.C. in GKN Drive Shafts v. CIT 259 ITR 19, may be declared as null and void in law.

2. The assessee submits that the assessee had specifically requested the AO vide response dated 11.04.2018 to provide the copy of approval obtained by the A.O. u/s 151 from the Pr. CIT before issuing notice u/s 148, however, the same has not been confronted by the A.O. to the assessee till the completion of the reassessment proceedings and hence, it has to be presumed that no proper approval as mandated u/s 151 was obtained by the A.O. before issuing notice u/s 148 and therefore, the said notice u/s 148 may be declared as null and void in law.

3. The learned CIT-(A) erred in not appreciating the fact that the information on the basis of which the A.O had reopened the assessment was not correct and therefore, the case reopened on basis of incorrect information may please be declared as void in law.

4. The learned CIT-(A) erred in confirming the addition us 68 of Rs. 1,65,30,000 made by the A.O. towards alleged unexplained money received by the assessee company from M/s G D Enterprises without appreciating that the said addition was not warranted on facts and in law.

5. The learned CIT-(A) failed to appreciate that the assessee company had not received any monetary benefits from M/s G.D. Enterprises, as alleged by the A.O., in fact, the assessee company had not entered into

any transaction with the alleged party and therefore, the addition of Rs. 1,65,30,000 made by the A.O. on alleged transfer of fund was not justified on facts of the case.

6. The learned A.O. ought to have appreciated that the company mentioned by the A.O. was a different company bearing the similar name i.e Kuber Tieup Pvt Ltd CIN US1109WVB2005PTC102847 whereas the assessee company known as, Ku-ber Tie-Up Pvt. Ltd CIN US1109WB2005PTC103760 and thus, the A.O. had wrongly presumed that the company named in the information was the assessee company and hence, the addition made on the basis of such incorrect presumption was not justified.

7 The appellant craves leave to add/ alter/ amend any of the grounds of appeal.”

3. The Id. Counsel for the assessee has invited our attention to the impugned assessment order to submit that the same is an ex parte order. It has been submitted that the assessee did not receive any notice of hearing from the Assessing Officer resulting into the ex parte assessment order passed in the case of the assessee. That even no notice by physical mode was ever received by the assessee from the Id. CIT(A) also. It has been further pleaded that the counsel for the assessee had also suffered brain haemorrhage, therefore, he also did not properly pursue the appeal of the assessee resulting into ex parte order of the CIT(A). The Id. Counsel has further submitted that the allegation in the assessment order is that the assessee had received unexplained income by way of accommodation entry of Rs.1,65,30,000/- from M/s. G. D Enterprises in its bank account. The Id. Counsel has pleaded that there was some mis-information to the Income Tax authorities. That the assessee did not undertake any transaction, whatsoever, with the said M/s. G. D Enterprises, nor received any amount as alleged by the Assessing Officer. That the alleged bank account also did not belong to the assessee.

4. Considering the above submissions, it is felt that the assessee has fair case on merit and that the assessee, in the interests of justice,

should be given an opportunity to present its case before the Assessing Officer. In view of this, the impugned order of the CIT(A) is set aside and the matter is restored to the file of the Assessing Officer for de novo assessment. The assessee will furnish its correct and proper address both physical and email to the Income Tax authorities/Assessing Officer. The assessee will promptly and regularly participate in the fresh assessment proceedings. Needless to say that the Assessing Officer will given proper opportunity to the assessee to present its case and to pass a fresh assessment order in accordance with law.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Kolkata, the 30th July, 2024.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 30.07.2024.

RS

Copy of the order forwarded to:

1. M/s Kuber Tie-up Pvt. Ltd
2. ACIT(OSD), Ward-2(3), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches