

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

Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member

I.T.A. No.106/Kol/2024
Assessment Year: 2013-14

Shree Shiromani Project Pvt. Ltd.Appellant
C/o Advocate Amit Agarwal,
50D, Mukta Ram Babu Street,
4th Floor, Kolkata – 700007.
[PAN: AABCV0376L]

vs.

ITO, Ward-2(1), Kolkata..... Respondent

Appearances by:

Shri Amit Agarwal, Advocate, appeared on behalf of the appellant.

Shri Kallol Mistry, JCIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 22, 2024

Date of pronouncing the order : July 29, 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 21.03.2023 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 assessee in this appeal has taken the following grounds of appeal:

"1. That the learned National Faceless Appeal Centre, Delhi erred in passing ex-parte order dated 21st March, 2023 under section 250 of the Income Tax Act, 1961 dismissing the appeal of the Appellant in limine without dealing with the merits of the case and by not passing order on the grounds of appeal raised by the Appellant Assessee Company against the impugned assessment order dated 30.09.2021 passed by the Assessing Officer under section 147 r.w.s 144 of the Income Tax Act,

1961 in the case of the Assessee Company for the Assessment Year 2013-14.

2. That the learned National Faceless Appeal Centre, Delhi erred in dismissing the Appeal of the Appellant Assessee Company without appreciating that the impugned reassessment proceedings suffers from various infirmities does not confirm with the requirements of section 147 to 151 of the Act and thus the resultant reassessment order dated 30.09.2021 passed by the Assessing Officer under section 147 r.w.s 144 of the Income Tax Act, 1961 was also illegal, invalid and without jurisdiction.

3. That, in the facts and circumstances of the case, learned National Faceless Appeal Centre, Delhi erred in dismissing the Appeal of the Appellant Assessee Company and thereby confirming the addition of the sum of Rs.2,94,13,031, being legitimate receipts received by the Assessee Company from sale of property, without appreciating that such receipts could not be doubted only on the basis of suspicions and surmises.

4. That, in the facts and circumstances of the case, learned National Faceless Appeal Centre, Delhi erred in dismissing the Appeal of the Appellant Assessee Company and thereby confirming the addition of the sum of Rs.26,00,000, being loan credits which was taken and later repaid, along with interest, within the same financial year, without appreciating that such genuine loan credits cannot be treated as unexplained cash credit under section 68 of the Act.

5. That, in the facts and circumstances of the case, learned National Faceless Appeal Centre, Delhi erred in dismissing the Appeal of the Appellant Assessee Company and thereby confirming the arbitrary additions aggregating to Rs.3,20,13,031 (Rs.2,94,13,031 + Rs.26,00,000) without appreciating that the said additions were totally untenable, illegal, invalid and liable to be deleted.

6. That the impugned order dated 21st March, 2023 under section 250 of the Income Tax Act, 1961 passed by learned National Faceless Appeal Centre, Delhi is against law and facts of the case.”

3. A perusal of the above grounds of appeal would reveal that the assessee in this appeal has contested the addition made by the Assessing Officer and further confirmed by the ld. CIT(A) of Rs.3,20,13,031/- (Rs.2,94,13,031/- + Rs.26,00,000/-). The amount of Rs.2,94,13,031/- has been added by the Assessing Officer into the income of the assessee as unaccounted income of the assessee on account of amount introduced by way of bogus sale of the property and

further the amount of Rs.26,00,000/- has been added into the income of the assessee by the Assessing Officer on account of accommodation entry received by the assessee on account of bogus share transaction.

4. The assessee has not only contested the validity of the reopening of the assessment u/s 147 of the Act but also disputed the validity of the additions on merits.

5. After considering the rival submissions and perusing the record, we find that in this case both the lower authorities have made/confirmed the impugned additions without going through the record and without properly appreciating the facts on the file. The Assessing Officer reopened the assessment proceedings in this case observing as per the information received from the Investigation Wing, the assessee has sold property to 41 persons and further the amount of sale consideration was passed on to the said 41 persons by the assessee itself and thereby the assessee had introduced his unaccounted money into its accounts by way of aforesaid sham transaction of the sale of its property. The copy of the reasons recorded for reopening of the assessment has been placed at page 3 of the paper-book, the contents of which, for the sake of ready reference, are reproduced as under:

“An information has been received from DDIT,(I & C.I.), Circle-1, Kolkata vide letter no. DDIT (i & C,1.)-1,/Kol/Properiy-12/2017-18/815 dated 27.12.2017 that M/s. Shree Shiromani Projects Pvt. Ltd.(PAN-AABCV9376L) had sold 394.77 decimal in favour of Sri Binod Kumar Mohipal and others and consideration paid an amount of Rs.2,94,13,031/- against stamp duty valuation of Rs.15,16,64,069/- during the F.Y.2012-13 as per sale deed. All these 41 persons has made payment of Rs.2,39,130/- individually from his bank account and an equivalent amount in cash on the said date has been deposited in the bank account. It had also been contended that a part payment for the purchase of Said land has been made by this person out of loan and advances. During the course of investigation, one of the then directors, Sri Rajendra Kumar Sonthalia whose statement on oath was recorded and

admitted that these 41 persons are nominees of M/s. Shree Shiromani Projects Pvt. Ltd.

In view of the above, I have reason to believe that the said amount of Rs.15,16,64,069/- was chargeable to tax, has escaped assessment under Benami Transaction (Prohibition) Amendment Act, 2016 which the meaning of Sec.147 of the I.T. Act, 1961 for the F.Y.2012-13 relevant to A.Y. 2013-14.

Further an information has been received by mail from DDIT(Inv.), Unit-1(2). Kolkata vide his No.DDIT(Inv.)/Unit-1(2)/Kol/Sharing of Information/2019-20 dated 12.03.2020. It has been informed that the assessee company, M/s. Shree Shiromani Projects Pt Ltd. has received Rs.28,00,000/- from M/s. Raghuvir Sales Pvt Ltd. through PNB A/C. No.0091005500000206. during the F.Y.2012-13 relevant to A.Y. 2013-14.

Hence the assessee, M/s. Sherawali Commotrade Pvt. Ltd. is a total beneficiary of Rs.15,44,64,069/- = (Rs.15,16,64,069/- + Rs.28,00,000) during the F.Yr. 2012-13 relevant to A.Yr. 2013-14.

Hence, I find it as a fit case for re-opening u/s 147 of the I.T Act 1961 for the A.Y.2013-14 and propose for the re-opening of the case, subject to necessary approval of Pr. C.I.T.-1, Kolkata/ Addl. CIT, Range-2, Kolkata.”

5.1 A perusal of the above reasons recorded would reveal that the allegation is that the assessee company has sold its own land by way of sham transaction and received sale consideration of Rs.2,94,13,031/- and further the allegation is that the said amount was paid in cash by the assessee itself to 41 persons in whose name the sale was recorded, who further paid the amount to the assessee through cheques/banking channel. The second allegation is that the assessee had received an amount of Rs.28,00,000/- from M/s Raghuvir Sales Pvt. Ltd. through banking channel. However, the ld. counsel for the assessee has brought our attention to the copy of an order bearing no.31/2018-19 dated 01.05.2018 passed u/s 24(4)(a)(ii) of the Prohibition of Benami Property Transactions Act 1988 in case of the assessee. A perusal of the aforesaid order, copy of which has been placed at page 12 of the paper-book, would reveal that the proceedings under Prohibition of Benami

Property Transactions Act 1988 were initiated against the assessee in relation to the very same transactions of sale/purchase of the property. A perusal of the said order would reveal that firstly, the observation of the Assessing Officer in the reasons recorded that the assessee had sold the property in question was factually wrong. In fact, the said property in question was sold by the vendors, Smt. Sandhya Sadhukahn, Sri Ranjan Sadhukhan and Smt. Ritu Sadhukhan to the 41 persons mentioned as Shri Binod Kumar Mahipal and others who were allegedly the Benamidars of the property in question. The assessee namely Shree Shiromani Project Pvt. Ltd. was allegedly the beneficiary of the said transaction. The alleged transaction was examined thoroughly by the competent authority in the said proceedings and a finding was arrived to the effect that out of total sale consideration of Rs.2,94,13,013/-, an amount of Rs.2,39,130/- each was paid by the aforesaid 41 persons directly to the vendors and further an amount of Rs.4,78,261/- each on behalf of the aforesaid 41 persons was paid by the assessee through banking channel. It was further explained before the competent authority that the assessee was the confirming party in the said conveyance deed. That the assessee had entered into a Joint Development Agreement ('JDA') with the said 41 persons and further that the litigation was going on in the Civil Court and subsequently in the High Court relating to the said JDA entered into by the assessee with the aforesaid 41 persons. So far as the fact relevant to the present case is concerned, a factual finding has been given in the said order that the assessee had duly explained the source of the payment and which was found satisfactory. Not only this, the assessee has made another payment of Rs.6,00,000/- to Shri Nirmal Mukherjee and other, source of which was duly explained before the competent authority and after consideration of the entire facts and circumstances, the proceedings under Prohibition of Benami Property Transactions Act

1988 were dropped against the assessee. The observation of the Assessing Officer not only in the reasons recorded but also in the assessment order that the assessee has sold the property in question by way of sham transaction and further the assessee has introduced his own money through the 41 persons and has sold its own property and thereafter itself became the Benami beneficial owner of the property, is factually wrong and false. There is no application of mind by the Assessing Officer to the facts and circumstances of the case. In this case, not only the reopening of the assessment is bad in law but also the addition on merits is not sustainable in the eyes of law. In view of this, the impugned addition of Rs.2,94,13,031/- made by the Assessing Officer alleging that the amount introduced by way of bogus sale of the property by the assessee is ordered to be deleted.

5.2 So far as the second addition of Rs.28,00,000/- is concerned, the only allegation written in the reasons recorded for reopening of the assessment is that the assessee had received the said amount from one, M/s Raghuvir Sales Pvt. Ltd. Mere receipt of an amount, without any information or evidence to form the belief that the said amount is unaccounted/escaped income of the assessee, would not constitute reasons to believe of escapement of income for the purpose of reopening of the assessee u/s 147 of the Act. Each and any receipt cannot constitute income. There is nothing mentioned in the reasons recorded that the said receipt and in what manner and on what account can be believed to be an escaped of income of the assessee for the year under consideration. Moreover, in the assessment order, the Assessing Officer has mentioned that the said amount has been received by the assessee on account of bogus share transactions. However, there is no mention in the assessment order about the details of such transactions as to for what amount the assessee has purchased or sold the shares of or to

which company, from whom the same was purchased and to whom the same was sold, whereas, the ld. counsel for the assessee has filed the reply to the show-cause notice issued by the Assessing Officer, copy of which is placed at page 6 of paper-book, wherein, it has been explained that the aforesaid amount of Rs.28,00,000/- was on account of unsecured loans which was repaid during the financial year under consideration, itself, along with interest and TDS also deducted thereupon. The statement of bank account was also furnished. In view of this, not only the reopening of the assessment in this case is bad in law but also the impugned additions are not sustainable and the same are accordingly ordered to be deleted.

6. In the result, the appeal of the assessee stands allowed.

Kolkata, the 29th July, 2024.

Sd/-

[Sanjay Awasthi]

लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 29.07.2024.

RS

Copy of the order forwarded to:

1. Shree Shiromani Project Pvt. Ltd.
2. ITO, Ward-2(1), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches