

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, KOLKATA

डॉ. मनीष बोरड, लेखा सदस्य

एवं

श्री संजय सरमा, न्यायिक सदस्य

के समक्ष

Before

Dr. Manish Borad, Accountant Member

&

Shri Sonjoy Sarma, Judicial Member

I.T.A. No.810/KOL/2024

Assessment Year: 2015-16

M/s. Shivdhara Property Venture Pvt. Ltd.
(PAN: AARCS0501L)

Appellant

Vs.

Income Tax Officer, Ward-11(1),
Kolkata

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Respondent

Appearances by:

Shri Sunil Surana, AR appeared for Appellant.

Shri P. P. Barman, Addl. CIT, Sr. DR appeared for Respondent.

Date of concluding the hearing : 10.07.2024

Date of pronouncing the order : 14.08.2024

ORDER

Per Dr. Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short “AY”) 2015-16 is directed against the revision order passed u/s 263 of the Income Tax Act, 1961 in short the “Act”) by Ld. Pr. Commissioner of Income-tax, Kolkata-2 [in short Ld. “Pr. CIT”] dated 28.03.2024 arising out of the assessment order framed u/s 153(A) of the Act by ACIT, Central Circle-3(2), Kolkata dated 13.04.2021.

2. Grounds of appeal raised by the assessee read as under:

“1. For that the Ld. PCIT erred in directing the AO for making an addition of Rs.3,54,000/- being filing fees for increase in authorized capital debited in the Profit and Loss account when no incriminating material or document was found during the search for the relevant assessment year and assessment was not abated.

2. For that the Ld. PCIT erred in taking into consideration items which were part of regular books of accounts in respect of an unabated assessment where no addition was made by AO in absence of any incriminating material.

3. For that the Ld. PCIT erred in passing the revisionary order when the AO himself had considered the aspect that no disallowance of items in regular books of account is possible in the absence of incriminating material in case of unabated assessments.”

3. At the outset, Ld. Counsel for the assessee submitted that the assessment order which is the subject matter of the revisionary proceeding itself deserves to be quashed since no incriminating material was found during the course of search carried out at the assessee on 27.11.2018 and that AY 2015-16 is a complete and non-abated assessment year, no addition could be made without recourse to any seized material. Reliance placed on the judgment of Hon'ble Apex Court in the case of *Pr. CIT Vs. Abhisar Buldwell (P) Ltd. [2023] 149 taxmann.com 399 (SC)* . Reliance also placed on the decision of the Tribunal in *Garud Credit & Holding Pvt. Ltd. Vs. ITO, ITA No. 1270/Kol/2013 dated 01.05.2023* in support of the contention that validity of the assessment proceedings can be challenged in the course of appeal filed against the order u/s. 263 of the Act.

4. On the other hand, Ld. DR vehemently supporting the order of the Ld. Pr CIT.

5. We have heard rival contentions and perused the mater placed before us. We observe that the assessee is a Private Limited Company and was part of 'Manyavar Group' and subjected to search and seizure operation carried out u/s. 132 of the Act on 26.11.2018. As stated by the Ld. Counsel for the assessee regular return of income for AY 2015-16 was filed by the assessee company u/s. 139(1) of the Act and the same was selected for scrutiny by way of issuance of notice u/s. 143(2) of the Act. Also no assessment proceedings for AY 2015-16 were pending as on the date of search. It is thus not disputed at the end of both the parties that the impugned assessment year is falling under the category of complete and non-abated assessment year. Further, perusal of the assessment order dated 13.04.2021 reveals that there is no reference to any incriminating material found during the course of search and no addition has been made in the assessment order framed u/s. 153A read with 143(3) of the Act. We further observe that the said assessment order dated 13.04.2021 and the assessment records were examined by Ld. Pr. CIT under the revisionary powers u/s. 263 of the Act and he noticed that an amount of Rs.3,54,000/- has been claimed as an expenditure in the audited P&L Account incurred towards ROC filing fees for increasing authorized share capital and observing that such claim is not allowable as expenditure since it is capital in nature, Ld. Pr. CIT issued show cause notice.

6. We further notice that since the assessment proceeding in question were subsequent to the search and the assessment year is a complete and non-abated assessment year, therefore, Ld. AO

could only make addition for the issue which arose from the seized material found during the course of search for the relevant assessment years. Also in view of the recent judgment of the Hon'ble Apex Court in the case of *Abhisar Buildwell (P) Ltd. (supra)* the action of the AO in not dealing with any other issue for the relevant assessment year in absence of any incriminating material is found to be justified and within the four corners of law. Therefore, when the AO was not within his jurisdiction to examine those transactions which stood already furnished as part of the audited financial statement and were also submitted with the regular return of income, then in such circumstances, how can Ld. PCIT exercise his jurisdiction on the said issue.

7. Further, as held by this Tribunal in the case of *Garud Credit & Holding Pvt. Ltd. (supra)* the validity of the assessment proceedings can be challenged during the course of appeal filed against the revisionary proceeding.

8. We, therefore, under the given facts and circumstances of the case are of the considered view that since the order of the AO is neither erroneous nor prejudicial to the interest of the revenue and since the issue which has been referred by the Ld. CIT could not have been examined by the AO in the assessment order framed u/s. 153A of the Act subsequent year on account of search carried out in the case of the assessee, Ld. PCIT erred in assuming jurisdiction u/s. 263 of the Act on the alleged issue of books of account. Certainly there were other recourse available with the revenue authorities to carry out the proceedings on the

said issue but the same cannot be carried out u/s. 263 of the Act. We, accordingly, quash the impugned order and restore the assessment order framed u/s. 153A r.w.s. 143(3) of the Act dated 13.04.2021. Appeal of the assessee is allowed.

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

Order is pronounced in the open court on 14th August, 2024.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/- [Dr. Manish Borad]
Accountant Member

Dated: 14th August, 2024

J.D. Sr. PS.

Copy of the order forwarded to:

1. **Appellant – M/s. Shivdhara Property Ventre Pvt. Ltd., SDF-1, A501-A502, Paridhan Garment Park, 19, Canal South Road, 4th floor, Chingrihata, Kolkata-700015.**
2. **Respondent – ITO, Ward-11(1), Kolkata**
3. Pr. CIT, Kolkata-2.
4. CIT-
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata