

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

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

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

I.T.A. No.: 988/KOL/2024
Assessment Year: 2006-07

Salarpuria Properties Pvt. Ltd.....Appellant
[PAN: AAGCS 8492 P]

Vs.

DCIT, CC-3(2), Kolkata.....Respondent

Appearances:

Assessee represented by: S. Jhajharia, AR.

Department represented by: Altaf Hussain, Addl. CIT, Sr. DR.

Date of concluding the hearing : August 1st, 2024

Date of pronouncing the order : August 26th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

The instant appeal filed by the assessee is time barred by 1466 days. The appellant has filed an affidavit explaining the reasons for delay and the contents of the same are extracted as under:

“I, Raj Kumar Jalan, son of Shankar Lal Jalan, residing at 1 A, DEODAR STREET, KOLKATA-700019, being the Director of, Salarpuria Properties Pvt. Ltd., (hereinafter referred to as “the Company”) having Registered Office at South City Business Park 770, Anandpur Road, 9th Floor/Kolkata 700107, do hereby solemnly affirm that-

1. That, the Company have preferred an Appeal before the Hon'ble Income Tax Appellate Tribunal, Kolkata;

2. That the Appeal No. is 988/Kol/2024 for Assessment Year 2006-07 and is fixed for hearing I before the "C" Bench of Hon'ble Income Tax Appellate Tribunal, Kolkata on 1st August, 2024.

3. That there has been a delay of the delay of 795 days (i.e. excluding 710 days of Covid period), in filing of the Appeal before the Hon'ble Income Tax Appellate Tribunal, Kolkata;

4. The reasons for delay in filing of the Appeal is for the reasons mentioned below-

a) The order dated 28.2.2020 passed by the CIT(A) was never served upon the Company and only in 3rd week of April, 2024 it came to knowledge of the Company from E-portal.

b) As soon as the fact of such of the order being passed was brought to knowledge of the Management, the matter was forwarded by the Company to the tax consultant.

c) Subsequently, the Company was advised to file appeal against the impugned order and hence the delay which was beyond under control and despite genuine effort and as such the delay of 1490 days in filing such appeal.

d) As a matter of abundant precaution even if it is presumed that such order was / could have been served by 28.2.2020 the date of order as 28.2.2020 is being treated as date of service of order although it came to the knowledge of the Company only on 18.4.2024.

e) Meanwhile, the Covid period was also prevailing for which Hon'ble Apex Court had granted relief and hence such period from 20.3.2020 to 28.2.2022. Hence the delay of 795 days (i.e. excluding 710 days of Covid period).

f) Since the appeal couldn't be filed against the said order within time for filing the appeal i.e. by 29.4.2020 and is being filed now after delay of 1490 days due to reasonable cause only and hence it is prayed before the Hon'ble Income Tax Appellate Tribunal, that the Appeal may kindly be accepted in the interest of justice and fairness. Hence, the appeal had been filed along with a petition for condonation of delay of 1490 days.

It is humbly submitted that this Hon'ble Income Tax Appellate Tribunal, at Kolkata, on scrutinising the facts and circumstances in the accompanying application, may please construe facts and circumstances as "sufficient cause" for condoning the delay. The facts and circumstances elucidated in

the accompanying application involves the question of "substantial justice", where gross delay of 795 days (i.e. excluding 710 days of Covid period), deserves to be condoned in the overall interest of justice. On the other hand if condoning the delay is being denied it would seriously undermine the cause of justice, resulting into miscarriage of justice for the appellant."

1.1. Considering the explanation submitted during the course of oral submissions on the date of hearing and the contents of the affidavit (*supra*) the appeal is admitted for adjudication in the interest of substantive justice.

2. In this case, there was a search operation in the case of one Sh. P. Dayananda Pai and a survey was conducted in the office premises of the appellant. It is recorded that several documents were seized from the residence of one Mrs. Kagoo, a trusted employee of Sh. P. Dayananda Pai. The seized documents purportedly contain details of receipts and payments through both cheque and cash. One such document is extracted as a copy and the same is available in the order of the Assessing Officer (hereinafter referred to as Id. 'AO'). Based on this document proceedings were initiated u/s 147 of the Income Tax Act, 1961 (in short the 'Act') and an assessment order was passed on 30.03.2013 for AY 2006-07, after making an addition of Rs. 35,50,000/- on account of alleged cash transactions which were not recorded in the books of accounts. Before the Id. CIT(A), the present appellant did not get any relief as the addition made by the Id. AO was confirmed in full.

2.1. Thereafter, the appellant is before the ITAT through the following grounds of appeal:

"1. For that in view of the facts and in the circumstances, the Ld. CIT(A) erred in affirming the addition of Rs.35,50,000/- made by AO on account of unexplained expenditure u/s 69C and such action of the Ld. CIT(A) is bad in law and the addition so affirmed by Ld. CIT(A) is liable to be deleted arid in view of the facts and in the circumstances it may be held accordingly.

2. Without prejudice to Ground No. 1 above, the Ld. CIT(A) erred in not appreciating the fact that the addition so made by AO of Rs.35,50,000/- u/s 69C is without any substance and without any cogent material and as such the affirmation of the addition made by Ld. CIT(A) is bad in law and it may be held accordingly.

3. Without prejudice to Grounds No. 1 & 2 above, the impugned addition based on the alleged search conducted on one Sri P. Dayanand Pai and the

statement made by his assistant Mrs. Kagoo in A.Y 2005-06 as well and such addition was deleted by Ld. CIT(A) in A.Y 2005-06 and in view of the facts and in the circumstances the addition so affirmed by Ld. CIT(A) in the A.Y 2006-07 on same facts is bad in law and it may be held accordingly.

4. Without prejudice to Grounds No. 1 to 3 above, the Ld. CIT(A) erred in not adjudicating on the validity of the impugned order passed u/s 143(3)/ 147 and in view of the facts and in the circumstances such non-adjudication of the validity of the impugned order is bad in law and in view of the facts and in the circumstances it may be held accordingly.

5. Without prejudice to Grounds No. 1 to 4 above, the Ld. CIT(A) erred in not considering the validity of the notice u/s 148 and the consequential proceedings and the order u/s 143(3)/ 147 and such action of the Ld. CIT(A) in not adjudicating the same is bad in law and in view of the facts and in the circumstances it may be held accordingly.

6. Without prejudice to Grounds No. 1 to 5 above, the aforementioned impugned order passed by Ld. CIT(A) was bad in law since the same was never served on appellant as required by sec. 282 of Income Tax Act and in view of the facts and in the circumstances it may be held accordingly.

7. For that your petitioner craves the right to put additional grounds and/or to alter/ amend/ modify the present grounds at the time of hearing.”

2.2. The ld. A/R took us through two orders of the Hon'ble ITAT, Kolkata “C” Bench in his own case for the immediately preceding assessment year and also the order of Hon'ble Calcutta High Court in the assessee's own case for the immediately preceding assessment year. Considering that the same document, as has been used to make the impugned addition for this year, was the subject matter of dispute in AY 2005-06 therefore, it is pertinent to extract portions from the Hon'ble ITAT's order in the assessee's own case in ITA No. 2502/KOL/2019 order dated 24.05.2023 as under:

“14. We have perused the material placed on record and carefully considered the submissions made by both the parties. From the perusal of the reasons to believe recorded by the Ld. AO, it is noted that by initiating the impugned proceedings, Ld. AO wanted to verify the source of cash payments and the taxability of cash receipts in respect of documents seized from the residence of Mrs. A. Kagoo, a trusted employee of Shri P. Dayanand Pai in the search operation of Shri P. Dayanand Pai. From the reasons to believe, it is evident that the documents relied upon for the purpose of initiating the reassessment proceedings are seized documents which have been seized in the course of search from a third person, unrelated to the assessee.

14.1. Further, from the seized documents, one of which is reproduced in the order of Ld. AO, we observe that the documents contain the mention of "Salarpuria a/c" which could denote any company within the Salarpuria Group and need not necessarily be the assessee itself. Even in the reasons to believe, ld. AO has mentioned about the transactions of cash in reference to "Salarpuria Group".

14.2. We also find that assessee had raised objection on the initiation of proceedings u/s. 148 by filing its objection petition before the Ld. AO in terms of the decision of Hon'ble Supreme Court in the case of GKN Driveshaft (supra) which has not been communicated to the assessee by giving a speaking order on the disposal of the objection petition.

15. We do find force in the submission made by the Ld. Counsel claiming that nothing incriminating was found in the course of survey proceeding conducted in the case of the assessee in relation to the addition made. It is also observed that Ld. AO has not examined or taken any action to verify the details recorded in the seized documents by calling Shri P. Dayanand Pai and his trusted employee Mrs. A. Kagoo. Further, assessee had requested for cross examination of the searched person i.e. Shri P. Dayanand Pai and his trusted employee in respect of the allegation raised on the assessee in the reasons record, which was not made available for rebuttal.

15.1. On going through the provisions of section 292C of the Act, we note that the presumption as to seized material is in respect of the person searched. In the present case, assessee is not the person searched u/s. 132 of the Act. From the perusal of order of Ld. CIT(A), it is also observed that Ld. CIT(A) had called for a remand report from the Ld. AO who failed to respond for the same. We also take note of the decision of Coordinate Bench of ITAT, Bangalore in the case of ACIT Vs. Dr. Rajan Pai (supra) on which Ld. CIT(A) has placed his reliance since Dr. Rajan Pai is incidentally the brother of Shri P. Dayanand Pai and was also searched along with him and the addition made on the basis of documents seized from Shri P. Dayanand Pai and his Secretary Mrs. A. Kagoo were held to be "dumbed document".

3. A perusal of the findings reveals that the document in question has been treated as a "dumb document" and relief has been granted to the assessee for that year. Thereafter, this matter travelled up to the Hon'ble Calcutta High Court where the findings of the Hon'ble ITAT have been considered in the assessee's case in ITAT/91/2024, IA No: GA/2/2024. The relevant portions from the findings deserve to be extracted for ready reference:

"This aspect of the matter among other things was elaborately considered by the learned Tribunal and on facts the learned Tribunal concurred with

the CIT(A) and dismissed the appeal filed by the revenue. The Tribunal re-appreciated the scope of the seized documents, one of which was reproduced in the order passed by the Assessing Officer, wherein there is a mention of "Salarpuria a/c" and the Tribunal held that this could denote any company within the Salarpuria Group and need not necessarily be the assessee, which is Salarpuria Properties Pvt. Ltd.

Thus, we find that the Tribunal on re-appreciation of the factual basis dismissed the appeal filed by the revenue.

Thus, we have no hesitation to hold that no questions of law, much less substantial questions of law, arise for consideration in this appeal. The appeal is thus dismissed."

3.1. Ld. D/R relied on the orders of the authorities below.

4. A careful reading of the ITAT's order and Hon'ble Calcutta High Court's order in the assessee's own case for the immediately preceding year reveals that the very base of the impugned addition for this year has been negated and the document has been treated as a "dumb document". Respectfully following the findings given in the Hon'ble ITAT/Hon'ble High Court's order, it is held that no addition can be sustained for this year on the basis of a document which has been rejected as having any evidentiary value.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 26th August, 2024.

Sd/-

[Sanjay Garg]

Judicial Member

Dated: 26.08.2024

Bidhan (P.S.)

Sd/-

[Sanjay Awasthi]

Accountant Member

Copy of the order forwarded to:

1. **Salarpuria Properties Pvt. Ltd., C/o. M/s. Salarpuria Jajodia & Co.,
7, C.R. Avenue, 3rd Floor, Kolkata, West Bengal, 700072.**
2. **DCIT, CC-3(2), Kolkata.**
3. CIT(A)-16, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata