

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

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

I.T.A. No.38/Kol/2022
Assessment Year: 2012-13

M/s Intent Infraprojects Pvt. Ltd.....Appellant
4/8, Chinar Park Athghora,
24 Parganas South,
Kolkata – 700157.
[PAN: AACCI8387B]

vs.

ITO, Ward-7(3), Kolkata..... Respondent

Appearances by:

Shri S. Jhajharia, AR, appeared on behalf of the assessee.

Shri Abhijit Kundu, CIT- DR, appeared on behalf of the Revenue.

Date of concluding the hearing : August 08, 2024

Date of pronouncing the order : September 04, 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 25.04.2019 of the Commissioner of Income Tax (Appeals)-3, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. Earlier, the appeal of the assessee was dismissed being barred by limitation by 927 days vide order dated 24.01.2023 of the Tribunal. The assessee preferred appeal before the Hon'ble High Court against the aforesaid dismissal, however, the Hon'ble High Court vide order dated 22.01.2024 passed in ITAT/2011/2023 allowed the appeal and condoned the delay in filing the appeal before this Tribunal subject to the conditions that the appellant/assessee would pay a sum of Rs.5 lakhs to the West Bengal Legal Services Authority. Thereafter, the

assessee produced copy of the receipt vide Memo no.125 dated 03.02.2024 acknowledging the receipt of Rs.5 lakhs. The appeal was accordingly restored and heard.

3. The assessee in this appeal has taken following grounds of appeal:

“1. Ld. CIT(A)-3 erred in confirmation of addition to the tune of Rs.54,50,86,200/- on account of unexplained credit.

2. The appellant craves leave to supplement, substitute, add, alter, amend, cancel or modify all or any ground at the time of hearing.”

4. The sole issue raised by the assessee in this appeal is against the confirmation of addition of Rs.54,50,86,200/-, which was made by the Assessing Officer on account of unexplained credits in the books of account of the assessee.

5. In this case, the Assessing Officer found that the assessee had receipt huge share-capital/share premium. However, during the scrutiny proceedings u/s 143(3) of the Act, the assessee failed to provide explanations and evidences to prove the identity, creditworthiness of the share subscribers and genuineness of the transaction. The Assessing Officer, purportedly, made the impugned additions of the amount shown to have been received by the assessee as share capital/share premium as unexplained credits in the books of account of the assessee.

6. Being aggrieved by the order of the Assessing Officer, the assessee preferred appeal before the ld. CIT(A). The ld. CIT(A) issued various notices to the assessee, however, there was no compliance before the ld. CIT(A) also. Thereafter, the ld. CIT(A) discussed in detail the facts of the case and in the light of various case laws, he confirmed the additions so made by the Assessing Officer.

7. We have heard the rival contentions and gone through the record. So far as the merits of the case are concerns, it has been noted by the Assessing Officer that evidence, that is, on record, in the shape of Income Tax Returns only and that the assessee has not complied to various notices and the assessee before the Assessing Officer has failed to file necessary evidences and explanations to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction. Even before the first appellate authority, the assessee failed to appear or to file necessary evidences or explanations. The ld. CIT(A), after going through the record and referring to the various case laws, confirmed the addition so made by the Assessing Officer. Under the circumstances, there is no merit in the appeal of the assessee on the factual merit of the case.

7.1 However, a peculiar fact hitting at the very validity of the assessment order has come to our notice during the course of arguments. There is a procedural lapse on the part of the Assessing Officer in framing the assessment. In this case, the case of the assessee was selected for scrutiny assessment and accordingly notice u/s 143(2) of the Act was issued to the assessee on 08.08.2013, however, during the pendency of the scrutiny assessment proceedings, a search and seizure operation u/s 132 of the Act was carried out in the case of the assessee on 03.03.2015. The impugned assessment order is dated 23.03.2015. As per the 2nd Proviso to section 153A of the Act, the assessment or reassessment relating to any assessment year falling within period of six assessment years and for the relevant assessment year pending on the date of initiation of search u/s 132 of the Act would stand abated. In this case, therefore, on the date of initiation of search action on 03.03.2015, the original assessment u/s 143(3) which was pending on the date of search, stood abated. However, perhaps the

Assessing Officer was not aware of the search action carried out at the premises of the assessee on 03.03.2015. The Assessing Officer finalised the assessment order just after a few days of the search action i.e. 23.03.2015. Under the above circumstances, a procedural lapse has occurred on the part of the Assessing Officer. Since as per the 2nd Proviso to section 153A of the Act, the pending assessment on the date of search has to abate, therefore, the impugned assessment order will not have the force of law.

7.2 It is pertinent to mention here that the assessee, neither during the assessment proceedings nor during the appellate proceedings before the CIT(A), has ever raised any such objection regarding the abatement of the assessment. Even the assessee has not raised any ground in this respect before this Tribunal. No argument has ever been advanced by the ld. AR on this issue during any stage of proceeding either before the lower authorities or before this Tribunal. However, since this procedural lapse has come to our notice, therefore, comments of both the ld. Representatives were asked for to which there was no difference of opinion on this legal issue.

8. At this stage, the ld. AR has invited our attention to the subsequent assessment order dated 31.12.2016 passed u/s 153A r.w.s. 143(3) of the Act. He in this respect has brought to our attention that a further inadvertent procedural lapse has been made by the Assessing Officer in the subsequent assessment order passed u/s 153A r.w.s. 143(3) of the Act. The Assessing Officer under the misconception, considering that the merits and reasoning of the impugned additions has already been discussed in the original assessment order passed u/s 143(3) dated 23.03.2015 (wrongly written as 23.03.2016), did not make further enquiries/discussion relating to the impugned additions in the subsequent assessment order passed u/s 153A of the Act. Since the

discussion on the merits/validity of such additions was already done in the order dated 23.03.2015, hence the said additions were taken as such in the subsequent order dated 13.12.2016 passed u/s 153A of the Act. The relevant part of the order of the Assessing Officer dated 31.12.2016 passed u/s 153A of the Act, for the sake of ready reference, is reproduced as under:

“In pursuance of warrant of authorization issued by the Director of Income Tax (Investigation), Kolkata, a search and seizure operation u/s 132 of the Income Tax Act 1961 was carried out in the residential and business premise of “Gagan group” situated at various location on 03.03.2015. The assessee, Intent Infraprojects Pvt. Ltd. belongs to this group.

The case was heard and discussed with the A/R of the assessee.

Total income of the assessee is computed as under-

<i>Total income of the assessee as per order u/s 143(3) of the IT Act, 1961 dated 23/03/2016</i>	<i>54,50,84,650</i>
<i>Addition as per Sl. No.a) above-</i>	<i>1,100</i>
<i>Addition as per Sl. No.b) above-</i>	<i>450-</i>
<i>Total</i>	<i>54,50,86,200</i>

Total income is assessed at Rs.54,50,86,200/-.

Assessed u/s 143A/ 143(3) of the I.T Act as above.”

9. The ld. CIT-DR, however, has submitted that in this case due to inadvertent procedural lapse, the huge unaccounted income of the assessee may escape assessment. He in this respect has submitted that the income assessed/additions made in the original assessment order dated 23.03.2015 passed u/s 143(3) of the Act may not survive because of the said assessment order stands abated on the date of search action on 03.03.2015 and whereas, in the subsequent assessment order u/s 153A of the Act, the Assessing Officer has not discussed the said issue/additions on merits as the same has already been discussed in the earlier assessment order passed u/s 143(3) of the Act. The ld. DR has submitted that the Government will suffer huge taxation loss and

the income of the assessee will escape assessment due to inadvertent procedural error on the part of the Assessing Officer. The ld. DR has submitted that even the assessee is equally at fault in this respect. Had the assessee ever brought this fact to the knowledge of the Assessing Officer or even raised this issue during the first appellate proceedings before the CIT(A), the revenue would have taken the remedial action by way of invoking provisions of section 263 of the Act in respect of subsequent order passed u/s 153A of the Act. The ld. DR submits that the assessee should not be allowed to take benefit of the bona fide error occurred due to ignorance of the Assessing Officer as well as that of the assessee and that the Department should be allowed to take remedial action in respect of subsequent assessment order passed u/s 153A of the Act by invoking provisions of section 263 of the Act, irrespective of limitation period. The ld. CIT-DR has further referred to the provisions of sections 254 and 263(3) of the Act and has submitted that the Tribunal should pass the order to bring justice to both the parties to the litigation.

10. The ld. AR of the assessee, on the other hand, at this stage, has submitted that since the original assessment pending on the date of search stood abated, therefore, the additions made vide the impugned assessment order are not sustainable.

11. Considering the rival submissions, we are of the view that though a procedural lapse/mistake has been done by the Assessing Officer, perhaps, being not aware of the search action carried out at the premises of the assessee just few days before the passing of the assessment order, however, as per the provisions of section 153A of the Act, the assessment pending on the date of search stood abated, therefore, the impugned assessment order is to be treated as non-est and the same cannot be implemented. The legal issue hitting at the very

jurisdiction of the authority to pass such order can be raised at any stage and there is no estoppel against law. Moreover, we have been apprised by the ld. AR that the appeal against the order passed u/s 153A is pending before the ld. CIT(A), wherein, the issue relating to the validity of the impugned additions has also been raised. The copy of Form No.35 bearing acknowledgement number 622274211150217 has also been placed on the file. The powers of the CIT(A) under the Act are coterminous with that of the Assessing Officer and even the ld. CIT(A) enjoins the powers of enhancement of assessed income also. The ld. CIT(A), if so deem fit, in the appeal pending before him, may verify the issue and ask the assessee to furnish the necessary details and evidences on the issue and may call upon remand report from the Assessing Officer and decide the issue on merits. Therefore, at this stage, we do not think it appropriate to issue directions u/s 263(3) of the Act in relation to an assessment (u/s 153A), which is not disputed in the appeal before us. In view of the above discussion, the present appeal of the assessee stands allowed. The impugned assessment order passed u/s 143(3) of the Act is treated as non-est and consequential additions do not survive.

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

Kolkata, the 4th September, 2024.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 04.09.2024.

RS

Copy of the order forwarded to:

1. M/s Intent Infraprojects Pvt. Ltd
2. ITO, Ward-7(3), Kolkata

- 3.CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches