

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

Before
Dr. Manish Borad, Accountant Member
&
Shri Anikesh Banerjee, Judicial Member

I.T.A. No.571/KOL/2018
Assessment Year: 2013-14

M/s. Kaushalya Infrastrucutre Development Appellant
Corporation Ltd.
HB-170, Sector-III, Salt Lake City,
Kolkata-700106.
(PAN: AACCK1581F)

Vs.

DCIT, Central Circle-3(3), Kolkata Respondent

Appearances by:

Shri Miraj D. Shah, AR appeared for Appellant.

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

Date of concluding the hearing : 06.06.2024

Date of pronouncing the order : 04.09.2024

ORDER

Per Dr. Manish Borad, Accountant Member:

This appeal filed at the instance of the assessee pertaining to the Assessment Year (in short “AY”) 2013-14 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the “Act”) by Ld. Commissioner of Income-tax, (Appeals)-21, Kolkata [in short Ld. “CIT(A)”] dated 27.02.2018 arising out of the assessment order framed u/s. 143(3) of the Act by DCIT, Central Circle-3(3), Kolkata dated 29.03.2016.

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

“1. That the order passed u/s 250 of the Income Tax Act, 1961 is bad in law as well as on facts of the case.

2. That the Ld. CIT (Appeals) - 21, Kolkata erred in law as well as on facts by confirming the addition made by the Ld. A.O. to the tune of Rs.2,63,70,531/-, being 10% of the contractual amount of Rs.26,37,05,308/- received by the appellant, merely on the basis of information received from another ITO.

3. That the Ld. CIT (Appeals) - 21, Kolkata erred in law as well as in facts of the case by confirming the addition made by the. Ld. A.O of Rs.2,74,51,250/- u/s. 68 of the Income Tax Act, 1961 being amount received against issue of share warrants.

4. That the Ld. CIT (Appeals) - 21, Kolkata erred in law as well as in facts of the case by confirming the disallowance of claim of actual loss as per profit and loss account to the tune of Rs 2,00,85,104/- for the purpose of computation of total Income.

5. That the appellant craves leave to add/or amend any ground of this appeal.”

3. Brief facts of the case are that the assessee is a limited company engaged in the business of construction and contractor. Income of Rs.1,27,86,618/- declared in the return for AY 2013-14 filed on 30.09.2013. Case was selected for scrutiny assessment under CASS followed by validly serving notices u/s. 143(1) and 142(1) of the Act and assessment proceedings were carried out. Partial submissions were made on certain issues but on few occasions, assessee could not make proper compliance. As a result, Ld. AO made certain additions and assessed the income at Rs.6,34,90,960/-.

4. Aggrieved, assessee preferred appeal before the Ld. CIT(A) and made detailed submissions but was able to succeed partly.

5. Aggrieved, assessee is now in appeal before this Tribunal raising various grounds of appeal which should be dealt in the subsequent paras.

6. Ld. Counsel for the assessee vehemently argued referring to the detailed submission filed before the Ld. CIT(A) as well as referring to various documents placed in the paper book containing 277 pages.

7. On the other hand, Ld. DR vehemently argued supporting the orders of the Ld. CIT(A).

8. We have heard rival submissions and perused the records placed before us. Ground no. 1 is general in nature and requires no adjudication.

9. Ground no. 2 raised by the assessee is against the addition of Rs.2,63,70,531/- being 10% of the gross contractual amount of Rs.26,37,05,308/-. We observe that the assessee was awarded a contract from M/s. Silverpoint Infratech Limited at Rs. 15.01 Cr. which the assessee sub-contracted to Rajshila Nirmal (P) Ltd. at a contract value of Rs.11,49,95,000/- and thus declared a gross profit of Rs.3,51,05,000/- which is approximately 23.40%. Ld. AO has referred Rajshila Nirman (P) Ltd. as a bogus contractor who has no means but apart from levelling the allegation no other fact has been brought on record. On perusal of audited financial statement and documents placed before us, we notice that the gross contract receipt of the assessee company is approx. 26.37 Cr. and the gross profit declared in the books is 24.77%. Thus, it is apparent that the assessee company has disclosed substantial profits from its contractual business and, therefore, the allegation made by the AO that the appellant has entered into the sub-contract agreement with alleged Rajshila Nirman (P) Ltd. to reduce its profit cannot be held to be

justified. Since the assessee is maintaining regular books of account which are duly audited and the assessee being a limited company, apart from bald allegation of lower authorities, no other evidence has been brought on record before us by Ld. DR nor has been referred in the proceedings before the lower authorities. We are, therefore, inclined to hold that Ld. CIT(A) erred in confirming the action of the Ld. AO of making addition of 10% profit of the gross contract receipt over and above the profits declared by the assessee. Thus, finding of Ld. CIT(A) is set aside and ground no. 2 raised by the assessee is allowed.

10. Ground No. 3 is raised against the addition made u/s. 68 of the Act at Rs.2,74,51,250/-. The alleged sum was received by the assessee against issue of share warrants. We note that the assessee is a listed company governed by the Security Exchange Board of India Rules and Regulations. The share warrants issued at a price of Rs. 11/- and the said scheme of issue of share warrants has been approved by SEBI. It is also noticed that the book value of the equity shares as on the date of issue of share warrants stood at Rs.45.62 per share. The details filed before us also indicates that the share applicants to these share warrants are existing shareholders and mainly constitute the individual, HUF and companies. It is also not in dispute that the share applicants are duly assessed to tax and have sufficient own funds to subscribe to the share warrants. Considering all these facts, we find that a genuine transaction has been carried out between assessee and its existing shareholders for the issue and subscription of share warrants which is at the price far below the book value and the identity and creditworthiness of the parties

are also not in dispute as they are existing shareholders. We, therefore, set aside the finding of the Ld. CIT(A) and delete the impugned addition of Rs.2,74,51,250/- made u/s. 68 of the Act. Ground no. 3 raised by the assessee is allowed.

11. Ground No. 4 raised by the assessee stating that Ld. CIT(A) erred in confirming the disallowance of claim of actual loss as per Profit & Loss Account to the tune of Rs.2,00,85,104/- for the purpose of computing total income. After considering the submission of ld counsel for the assessee, we find that the Ld. AO while making computation of income has just added the loss as per P&L Account and has not considered the agricultural income earned by the appellant which is claimed to be exempt and Ld. AO erred in considering the same as taxable income. Further, we note that in the assessment order, there is no mention of any such fact relating to the alleged addition. Under these given facts and circumstances, we deem it appropriate to restore the issue raised in ground no. 4 to the file of the Ld. AO for necessary verification and after considering the details and submissions to be filed by the assessee, Ld. AO can decide the issue in accordance with law. Ground no. 4 of the appeal of the assessee is allowed for statistical purposes.

12. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order is pronounced in the open court on 4th September, 2024.

Sd/-
(Anikesh Banerjee)
Judicial Member

Dated :04.09.2024

Sd/-
(Dr. Manish Borad)
Accountant Member

J.D. Sr. PS.

Copy of the order forwarded to:

- 1.Appellant – Kaushalya Infrastrucutre Development Corporation Ltd.,**
- 2. Respondent – DCIT, Central circle-3(3), Kolkata**
- 3. CIT(A)-21, Kolkata**
- 4. CIT-**
- 5. Departmental Representative**
- 6. Guard File.**

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata