

IN THE INCOME TAX APPELLATE TRIBUNAL "A" 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.365/KOL/2024

Assessment Year: 2013-14

Agamani Vanijya Pvt. Ltd.

Vandana Auto Rmakund, G.E. Road,

Chhattisgarh-492001.

(PAN: AAGCA6022P)

.....

Appellant

Vs.

Assessing Officer

National Faceless Assessment Centre,

Delhi.

.....

Respondent

Appearances by:

Shri Abhisek Bansal, AR appeared for Appellant.

Shri Pradip Kumar Biswas, Addl. CIT appeared for Respondent.

Date of concluding the hearing : 28.08.2024

Date of pronouncing the order : 27.09.2024

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), National Faceless Appeal Centre (NFAC), Delhi [in short Ld. "CIT(A)"] dated 29.12.2023 arising out of the assessment order

framed u/s. 147 r.w.s. 144B of the Act by Assessing Officer, National Faceless Assessment Centre, Delhi dated 19.09.2021.

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

“1. For that the assessment order passed. by the Ld. AO is bad in law as well as on facts.

2. For that the reassessment proceedings initiated merely on the basis of information received without me AO himself carrying out any Inquiry and without independent application of mind is bad in law. Even otherwise the reasons recorded being vague, the proceedings are bad in law.

3. For that the reasons recorded alleging that cash paid by beneficiaries and were routed back to them whereas there was no involvement of cash even as per the trail presented in the assessment order. Even otherwise, in the said trail the name of the assessee appears as "Layer-3" and not as beneficiary.

4. For that the Ld. CIT(A) erred In assessing the amount of Rs. 30 Lakh received against sale of Investments that were acquired in earlier year and the assessment of which attained finality. Even otherwise, Sec. 68 cannot be applied for amount received against sale of investment.

5. For that the Ld. CIT(A) passed the order In haste without providing the appellant sufficient opportunity of being heard.

6. For that under the facts and circumstances of the case, the reassessment proceeding is bad in law and the addition made by the Ld. AO and affirmed by the Ld. CIT(A) is liable to be deleted.

7. For that the appellant craves leave to add, alter or withdraw any ground(s) of appeal on or before hearing of the appeal.”

3. Though the assessee has raised as many as seven grounds of appeal the sole grievance of assessee is against the finding of the Ld. CIT(A) confirming the addition for unexplained cash credit u/s. 68 of the Act at Rs. 30 lakhs for the alleged sum received from Rootra Sales Pvt. Ltd. (in short “RSPL”).

4. At the outset, Ld. Counsel for the assessee submitted that there is no fresh unsecured loan/fresh share capital received during the year. The assessee held shares of Varsha Commercial Pvt. Ltd. (in short VCPL”) allotted to it as on 31.03.2008 having face value of Rs. 10/- each and share premium of Rs. 190/-. Total purchase consideration paid for acquiring 20,000 equity shares of VCPL during FY 2007-08 was Rs. 40 lakhs. During the year under consideration, 15,000 equity shares of VCPL have been sold to RSPL at its cost price i.e. Rs. 200/- per share and the assessee has received the sale consideration of Rs.30 lakh. He also submitted that the case of the assessee has already been scrutinized u/s. 143(3) of the Act vide order dated 28.01.2016 and the said transaction has also been examined in detail by the Ld. AO and, therefore, the reopening is based on change of opinion. He thus, submitted that the impugned addition is uncalled for.

5. On the other hand, Ld. DR vehemently argued supporting the orders of the authorities below and further stated that RSPL is a ‘jamakharchi’/shell company and the alleged transaction is a part of layering of funds by accommodation entry operator.

6. We have heard rival submissions and perused the material placed before us. Addition u/s. 68 of the Act at Rs. 30 lakh confirmed by the Ld. CIT(A) is in dispute before us. The alleged sum has been received from RSPL. On perusal of the paper book containing 68 pages, firstly we observe that assessee has been subjected to regular scrutiny u/s. 143(3) of the Act for the impugned assessment year and all details as called for by the Ld.

AO were submitted and assessment completed vide order dated 28.01.2016 making certain disallowances. Subsequently, based on information about the alleged transaction with RSPL the case of the assessee was reopened by issuance of notice u/s. 148 of the Act and assessment proceedings have been carried out before Ld. AO and it was stated that these details have been examined during the regular assessment proceedings and that the transaction is of sale of investments but Ld. AO was not satisfied and made the impugned addition. Even Ld. CIT(A) did not grant any relief. Before us various details connected to the issue under consideration has been filed and on perusal of the details it is noticed that the said transaction is not towards any fresh unsecured loan or fresh share capital/share premium received during the year. The alleged sum has been received against sale of 15000 equity shares of VCPL held by the assessee since FY 2007-08. The fact remains undisputed that the assessee purchased 20000 equity shares of VCPL having face value of Rs.10/- and share premium paid at Rs. 190/-, total of Rs.200/- per share, for consideration of Rs. 40 lakh vide allotment letter dated 31.03.2008. After having held the shares for around four and half years, the assessee sold 15000 equity shares at Rs. 200/- per share to RSPL and has received the alleged sum of Rs. 30 lakh. All the series of events establishes the fact that the alleged sum has been received from sale of investment in equity shares held by the assessee from past many years. Since the investment for purchase of the equity shares of VCPL happened during FY 2007-08, the action if any could have been taken for verifying the genuineness of the alleged investment during the

assessment for FY 2007-08 (AY 2008-09). However, in the year under consideration, merely the brought forward investment has been sold and sale consideration has been received. Since Ld. DR failed to controvert these facts, we are inclined to accept the contention of the assessee. Thus, the order of the Ld. CIT(A) is set aside and the impugned addition of Rs. 30 lakh is deleted. Grounds of appeal raised on merits are allowed.

7. As regards other grounds of appeal and the legal issues raised in the grounds of appeal, Ld. Counsel for the assessee did not press the same at the time of hearing. Therefore, the same are dismissed as not pressed.

8. Ground Nos. 5 to 7 are general in nature and do not require any adjudication.

9. In the result, the appeal of the assessee is partly allowed.

Order is pronounced in the open court on 27th September, 2024.

Sd/-
(Sonjoy Sarma)
Judicial Member
Dated : 27.09.2024
J.D. Sr. PS.

Sd/-
(Dr. Manish Borad)
Accountant Member

Copy of the order forwarded to:

1. **Appellant – Agamani Vanijya Pvt. Ltd.,**
2. **Respondent – A.O. National Faceless Appeal Centre, Delhi**
3. CIT(A), NFAC, Delhi
4. CIT-
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata