

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

**Shri Sonjoy Sarma, Judicial Member
Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No.1450/Kol/2024
Assessment Year: 2013-14**

M/s Coolhut Marketing Pvt. Ltd.,

2, Lal Bazar Street, 1st Floor,
Kolkata - 700001

[PAN: AAEECC7664F] **Appellant**

vs.

Income Tax Officer-6(1), Kolkata,

Aayakar Bhawan, P-7,
Chowringhee Square,

Kolkata – 700069..... **Respondent**

Appearances by:

Assessee represented by : Manoj Kataruka, AR

Department represented by : Prabir Gupta Choudhury, Addl. CIT

Date of concluding the hearing : September 04, 2024

Date of pronouncing the order : September 19, 2024

ORDER

Per Sonjoy Sarma, Judicial Member:

This appeal filed by 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 the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 13.06.2024 arising out of Assessment Order dated 13.09.2021, passed under Section 147 read with section 144B of the Act.

2. The Assessee has raised the following grounds of appeal:

- "1) *That on the facts and in the circumstances of the case the action of the CIT(A) to uphold the notice issued u/s 148 by the AO is illegal and bad in law.*
- 2) *That on the facts and in the circumstances of the case the reopening of the case made by the AO u/s 148 and the assessment framed u/s 147 as upheld by the CIT(A) is illegal, arbitrary and excessive.*
- 3) *That on the facts and in the circumstances of the case the action of the Ld. CIT(A) to uphold the addition of Rs 11,00,000/- made by the AO as unexplained income u/s 68 of the Act is arbitrary, excessive, illegal and bad in law.*
- 4) *That on the facts and in the circumstances of the case the action of the Ld. CIT(A) to uphold the addition of Rs.7,50,000/- made by the AO as unexplained investment of the Act is arbitrary, excessive, illegal and bad in law.*
- 5) *That the order of the Ld. CIT(A) confirming the action of the A.O. is arbitrary, excessive and illegal.*
- 6) *That the above grounds of appeal will be argued in details at the time of hearing and the appellant craves leaves to submit additional grounds of appeal if any and or alter, vary, modify or rectify the statement of facts and grounds of appeal at or before the time of hearing."*

3. Brief facts of the case are that the assessee filed its return of income u/s 139 of the Act by declaring total income of Rs. 2,642/-. The return of income was processed u/s 143(1) of the Act, later on, assessment was made u/s 143(3) of the Act on 13.02.2016 after making the addition of Rs. 22,27,350/- subsequent to the assessment order u/s 143(3) of the Act based on certain information, case of the assessee was reopened issuing notice u/s 148 of the Act. In response to the notices, assessee filed its return of income on 16.10.2020 by declaring total income of Rs. 2,642/- and assessment was framed u/s 147 read with section 143(3) of the Act on 13.09.2021 by determining the total income of the assessee at Rs. 20,79,992/-, inter alia, making the addition a sum of Rs. 11,00,000/- being

the amount credited in the bank account of the assessee to be unexplained cash credit in terms of Section 68 of the Act and a sum of Rs. 7,50,000/- as unexplained investment.

4. Being aggrieved by the action of the AO, the assessee preferred an appeal before the Ld. CIT(A) where the appeal of the assessee was dismissed.

5. Dissatisfied with the above order, the assessee is in appeal before this Tribunal raising various grounds of appeal. However, Ground No. 1 and 2 raised by the assessee challenging the reopening of the assessment proceedings as in the case of the assessee. On this context, the Ld. AR of the assessee stated that according to the first proviso to section 147 of the Act, where assessment has been framed u/s 143(3) of the Act, no action can be taken by the AO after the expiry of 4 years from the end of the relevant assessment year unless there is failure on the part of the assessee to disclose fully and truly all the material facts before him. He further stated that as in the present assessee, the original assessment order was framed u/s 143(3) of the Act for the assessment year in question was made vide order dated 13.02.2016, wherein detailed analysis scrutiny was made in respect of share capital and share premium received where clearly discussed in the assessment order. Therefore, there was no question on the part of the assessee to fully and truly disclose the fact, therefore, reopening as in the case of assessee by AO u/s 148 of the Act was illegal and upheld the such order by the Ld. CIT(A) as arbitrary and exclusively and bad in law, therefore, liable to be set aside.

6. The Ld. AR of the assessee in order to substantiate its claim, he relied on the decision of the Hon'ble Supreme Court passed as in the case of NDTV Vs. DCIT 271 Taxmann 1 (SC) wherein it was held that even

where a particular transaction is subsequently found to be bogus then also it cannot be said that assessee has not disclosed all material facts. The Ld. AR also relied on the decision of Calcutta Discount Company Vs. ITO 41 ITR 191 (SC). In the case there is no failure on the part of the assessee fully and truly disclose all material facts. Even further the failure if any should be reflected in the reasons. In the case of the assessee, there is nothing mention in the reasons. Further, in the case of Titanor Components Vs. ACIT-343 ITR 183 (Bom), First Source Solutions Ltd. Vs. ACIT 438 ITR 139 (Bom), Asia Net Star Communications Vs. ACIT 422 ITR 47 (Mad) and Hindustan Lever Vs. DCIT 439 ITR 333 (Bom), all these cases have held that the failure on the part of the assessee to disclose fully and truly all the material facts should be reflected in the reasons.

7. On the other hand, the Ld. DR supported the decision rendered by the authority below.

8. We after hearing the rival submissions of the parties and perusing the material available on record, we find that as in the case of assessee there was an assessment order passed u/s 143(3) of the Act vide order dated 13.02.2016, wherein all details analysed and scrutiny was made in respect of alleged share capital and share premium received by the assessee which is clearly reflected from the assessment order as submitted by the assessee, before us, in paper book at page No. 23-26 in order to prove the fact. Therefore, it cannot be said that the assessee has not disclosed truly all material facts before the AO. The Hon'ble Supreme Court as in the case of NDTV Vs. DCIT (supra) held as follows:

"34. It is interesting to note that whereas before this Court the Revenue is strenuously urging that the assessee is guilty of non-disclosure of material facts, before the High Court the case of the Revenue was just opposite. We may quote a portion of the counter-affidavit filed by the Revenue in response to the writ petition filed by the assessee before the High Court which reads as follows:

"It is evident from these facts that second proviso to s. 147 is clearly attracted in this case and first proviso to s 147 is not applicable to facts of this case, i.e., in this case, the only requirement to reopen assessment under s. 147 was that the AO has reason to believe that any income chargeable to tax has escaped assessment. The second condition that the income should have escaped assessment due to failure on the part of the assessee to disclose fully and truly all material facts necessary for making assessment is not relevant to decide issue before the Hon'ble Court.

This submission has been repeated a number of times in the counter-affidavit. Therefore, in our opinion the Revenue cannot now turn around and urge that the assessee is guilty of non-disclosure of facts. We are also of the view that the Revenue could not be permitted to blow hot and cold at the same time.

35. We are clearly of the view that the Revenue in view of its counter-affidavit before the High Court that it was not relying upon the non-disclosure of facts by the assessee could not have been permitted to orally urge the same. Even otherwise we find that the assessee had fully and truly disclosed all material facts necessary for its assessment and, therefore, the Revenue cannot take benefit of the extended period of limitation of 6 years. We answer Question No. 2 accordingly."

9. We following the decisions of the Hon'ble Supreme Court as rendered in the case of NDTV Vs. DCIT (supra), we find that the assessee has fully and truly disclosed all the material facts necessary for its assessment before the AO and at the time of framing of assessment order dated 13.02.2016 framed u/s 143(3) of the Act. Therefore, the notice issued u/s 148 of the Act dated 19.03.2020 was beyond the period of 4 years from the end of assessment order. Therefore, the Ld. CIT(A) order sustaining the addition made by the AO is hereby quashed and directed the Ld. AO to delete the addition as made in the case of the assessee. Accordingly, Ground No. 1 and 2 challenged by the assessee are hereby allowed.

10. Since, we allow the appeal of the assessee on legal ground pertaining to assumption of jurisdiction itself, therefore, remaining Ground Nos. 3 and 4 on merits are not adjudicated, similarly Ground Nos. 5 and 6 are general in nature, therefore, no separate adjudication on the issue involved. In terms of the above, appeal of the assessee is allowed.

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

Kolkata, the 19th September, 2024.

Sd/-

**[Sanjay Awasthi]
Accountant Member**

Sd/-

**[Sonjoy Sarma]
Judicial Member**

Dated:19.09.2024.

AK, PS

Copy of the order forwarded to:

- 1M/s Coolhut Marketing Pvt. Ltd
2. Income Tax Officer-6(1), Kolkata,
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches