

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

**Shri Sonjoy Sarma, Judicial Member
Shri Rakesh Mishra, Accountant Member**

**I.T.A. No.1499/Kol/2024
Assessment Year: 2011-12**

M/s Stone Metals Private Limited,
17, Kashinath Mullick Lane,
Kolkata - 700073
[PAN: AANCS9545G].....**Appellant**

vs.

Income Tax Officer,
Ward-3(3), Kolkata,
P-7, Chowringhee Square,
4th Floor, Kolkata – 700069 **Respondent**

Appearances by:

Assessee represented by : Abhishek Bansal, Advocate
Department represented by : Supriya Pal, Addl. CIT (DR)

Date of concluding the hearing : September 26, 2024
Date of pronouncing the order : September 30, 2024

ORDER

Per Sonjoy Sarma, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2011-12 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 (in short "the Ld. CIT(A)"), dated 14.06.2024 arising out of Assessment Order dated 21.12.2018, passed under Section 144/147 of the Act.

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

"1. For that the Ld. AO erred in initiating reassessment proceedings merely based upon information received without independent application of mind and without establishing any live link or intelligible nexus between the information received and belief formed.

2. For that the Ld. AO erred in assessing Rs. 4 Lakh allegedly received by the assessee from M/s Turf Advertising as unexplained cash credit whereas the impugned amount was not received during the year under appeal but the Financial Year 2011-12 (Assessment Year 2012-13). As such the very reason for which reassessment proceedings has been initiated is factually incorrect. Consequently, the entire reassessment proceeding is bad in law and ab initio void.

3. For that even otherwise, since the amount of Rs. 4 Lakh was neither received nor credited in the books of account of the assessee company, the addition made is liable to be deleted.

4. For that the Ld. CIT(A) erred in confirming the addition made by the Ld. AO stating that the said amount was liable to be assessed in the AY 2011-12 as per mercantile system of accounting whereas the assessee company had no transaction with Turf Advertising in the FY 2010-11 (AY 2011-12) and the amount of Rs. 4 Lakh was received as loan in the FY 2011-12 (AY 2012-13).

For that the appellant craves leave to add, alter or withdraw any grounds of appeal on or before hearing of the appeal."

3. Brief facts of the case are that the assessee filed its return of income on 30.09.2012. Subsequently, on the basis of information received from the Investigation Wing of the Income Tax Department, proceeding u/s 147 of the Act were initiated and notice u/s 148 of the Act was issued on 20.03.2018 after obtaining the requisite approvals. The Ld. AO upon reopening the assessment order added Rs. 4 lacs to the assessee income, the addition was made based on information that the assessee had allegedly received Rs. 4 lacs from M/s Turf Advertising and Marketing Co. Pvt. Ltd. during the financial year 2010-11. The Ld. AO view that the company associated for non-genuine business to bring unaccounted money into the books of its beneficiaries. The assessment was completed u/s 143(3) of the Act as the assessee did not represent its case during the reassessment proceedings.

4. Aggrieved by the addition made by the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A), which was dismissed without proper consideration of the submission made by the assessee. During the appellate proceedings, the Ld. CIT(A) based on examination of bank accounts, dismissed the appeal and further the addition by Rs. 3,50,000/-, making the total addition of Rs. 7,50,000, making the total addition of Rs. 7,50,000/-.

5. The assessee being further aggrieved as now preferred this appeal before this Tribunal.

6. At the time of hearing, the Ld. Counsel for the assessee submitted that the reassessment proceedings were based on solely on the information from the Investigation Wing, without any independent application of mind by the AO. It was contended that the amount of Rs. 4 lacs allegedly received by the assessee was not received during the financial year 2010-11 but in the financial year 2011-12. Therefore, the addition for FY 2011-12 was factually incorrect. It was further argued that the said amount had already been assessed in the subsequent assessment year 2012-13 and taxing the same amount in both years would result in double taxation, which is impermissible under the law.

7. On the other hand, the Ld. DR supported the order of the lower authorities argued that the addition was based on information received from Investigation Wing and the assessee had failed to provide satisfactory explanation during the reassessment proceedings.

8. We have heard the rival submission of both the parties and carefully perused the material on record. It is observed that the Ld. CIT(A) made the addition of Rs. 4 lacs solely on the basis of information received from Investigation Wing without making any independent enquiry or

establishing direct link between the information and the assessee's income for the relevant assessment year. Moreover, the assessee has provided evidence that the amount of Rs. 4 lacs was already included in the income of the assessee for the AY 2012-13. Therefore, taxing the same amount in two different years would indeed result in double taxation, which is not permissible under the Act. Furthermore, it is clear from the facts of the case that the AO did not apply his own mind while making the addition which was prejudicial to the interest of the assessee. In view of the above, we hold that the addition made by the Ld. AO as well as enhancement of such amount by the Ld. CIT(A) to the extent of Rs. 7,50,000/- u/s 68 of the Act is unsustainable in law. Accordingly, we set aside the order passed by the Ld. CIT(A) and direct the AO to delete the addition made as in the case of the assessee.

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

Kolkata, the 30th September, 2024.

Sd/-
[Rakesh Mishra]
Accountant Member

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated: 30.09.2024.

AK, PS

Copy of the order forwarded to:
1M/s Stone Metals Private Limited
2.Income Tax Officer,Ward-3(3), Kolkata
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches

