

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

**Shri Manish Borad, Accountant Member
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No. 1262/Kol/2024
Assessment Year: 2012-2013**

Godavari Multipurpose Articles

Pvt. Ltd.,

4, Fairlie Place, B.B.D. Bagh,

Kolkata - 700001

[PAN: AABCG0665M].....**Appellant**

vs.

Deputy Commissioner of Income Tax,

Circle – 7(1), Kolkata,

Aayakar Bhawan, P-7,

Chowringhee Square,

Kolkata - 700069..... **Respondent**

Appearances by:

Assessee represented by : S.K. Tulsiyan, Advocate
Puja Somani, CA

Department represented by : P.P. Barman, Addl. CIT, Sr. DR

Date of concluding the hearing : September 04, 2024

Date of pronouncing the order : October10, 2024

ORDER

Per SonjoySarma, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2012-13 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (in

short 'the Ld. CIT(A)'], dated 15.04.2024 arising out of Assessment Order dated 22.12.2019, passed under Section 143(3) r.w.s. 147 of the Act.

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

"1. That, the Ld. CIT(A) solely on suspicion that the assessee-company had used the group companies as a conduit to bring its own unaccounted income in the regular books has erred in upholding the reopening proceeding u/s 148 and the order passed u/s 143(3) r.w.s. u/s 147 of the Act dated 22.12.2019 when nothing irregularity in the transactions recorded in the audited balance sheets, bank statements etc. was pointed out resulting in escapement of income in the ROI or in the books of accounts and hence reopening of the assessment merely on the reason to suspect is liable to be quashed.

2. That, the Ld. CIT(A) while upholding the arbitrary treatment of 2. temporary loan of Rs.1,45,02,250/- as unexplained cash credit u/s Re 68 of the Act erred in not giving any cognizance to the reply u/s (Gr 133(6) of the Act from M/s Elpro Traders Ltd., a public limited company, confirming the genuineness of the transaction that the said amount was given to the assessee-company on a refundable basis, source of such advance was out of funds received from other group companies as loans/advances and moreover no outside party was involved in these transactions.

3. That, the Ld. CIT(A) while endorsing the addition of 3. Rs. 1,45,02,250/- u/s 68 of the Act further erred in not having considered the ledger copy of M/s Elpro Traders Ltd. in the books of the assessee-company showing receipt of temporary advances from the said group company on refundable basis and vice versa and also showing receipt of temporary loan of Rs.1,45,02,250/- and repayment of Rs.2,20,06,803/- to the said company during the year through proper banking channel and hence the addition in the guise of unexplained cash credit in the hands of the assessee is totally unwarranted, arbitrary and bad in law.

4. That, the Ld. CIT(A) blatantly upheld the arbitrary addition of Rs.1,45,02,250/- made by the Ld. A.O. on mere surmise and conjectures in the guise of unexplained cash credit in spite of the fact that there was no attempt at hiding the transactions of inter- group transfer of fund, nor was it the case of any of the parties to the transaction that there was any passing of cash and moreover provisions of sec. 68 of the Act do not lie in such inter-group transaction.

5. That, the Ld. CIT(A) further erred in having treated the cash deposits of Rs.56,00,000/- in the bank as unexplained money u/s Rs. 69A of the Act when the source of such cash was the refund of advance of Rs.54 lakhs received by the group company M/s Reward Services Ltd. in cash from its supplier M/s Paramount Iron & Steel Traders for non-supply of goods ordered and deposit of such cash on

lien in the assessee's bank account for reason of inoperative bank account of the group company.

6. That, as the order of the Ld. C.I.T.(A) on the above issues is devoid of any merit and suffers from illegality, the same should be quashed and your appellant be given such relief(s) as prayed for.

7. That, the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds."

3. The assessee company filed its return of income on 31.03.2013 by declaring total income as "Nil". Subsequently, the case of the assessee was reopened u/s 148 of the Act by issuance of notice u/s 148 of the Act on 27.03.2019. In compliance to the notice u/s 148 of the Act, the assessee filed its return of income by showing same income as reported in the original return of income. The appellant/assessee sought reasons for the reopening of the assessment. In compliance, the Ld. AO provided the reasons to the assessee. The reasons for reopening as recorded by the Ld. AO, basically on the primary issues; (i) a sum of Rs. 1,44,94,250/- received by the assessee from M/s Elpro Traders Ltd. alleged to be unexplained u/s 69 of the Act. (ii) Cash deposit made during the year of Rs. 56 lacs in the assessee bank account, treated as unexplained money u/s 69A of the Act.

4. At the time of hearing, the appellant/assessee objected to reopening by stating that the Ld. AO has neither recorded in the cogent reasons and not brought any tangible material to suggests that escapement of income. He argued that the Ld. CIT(A) had relied merely on the information provided by the Investigation Wings without independent verification or examination by the AO. The Ld. AO during the assessment proceedings proceeded that the reassessment and added Rs. 1,45,02,250/- as unexplained income u/s 68 of the Act and Rs. 56 lacs as un explained cash u/s 69A of the Act leading to the assessment u/s 147/143(3) of the Act.

5. Aggrieved by the above order, the assessee went in appeal before the Ld. CIT(a), where the appeal of the assessee was dismissed.

6. The appellant/assessee is now before this Tribunal raising multiple grounds of appeal. However, primarily grounds raised by the assessee in this appeal basically two-fold; (1) the assessment order framed u/s 147/143(3) was passed without any tangible material or reasons to believe that income had escaped assessment (2) Further, the addition of Rs. 1,45,02,250/- u/s 68 of the Act as unexplained cash credit and Rs. 56 lacs u/s 69A of the Act unexplained money was incorrect, therefore, the addition made by the AO are unsustainable in law.

7. At the time of hearing, the Ld. AR stated that the reopening of the assessment order solely based on information received through Investigation Wing and which was without independent inquiry made by the AO in such a situation assessment framed by the AO is not valid and liable to be dismissed. He also stated that the reasons recorded did not demonstrate how the amounts received from M/s Elpro Traders Ltd. and cash deposits made by the assessee constituted income that had escaped assessment, since M/s Elpro Traders Ltd is a group company of the assessee and although the assessee company and M/s Elpro Traders Ltd have common Directors as the funds received from them were in form of temporary advances which were fully explained with the supported evidence. He contended that entire transaction was routed through normal banking channels and the repayment of Rs. 1,45,02,250/- to M/s Elpro Traders Ltd was substantiate with proper ledger bank statement. Similarly, the Ld. AR argued that Rs. 56 lacs deposited in the bank account was duly explained stating that out of Rs.56,00,000/-, a sum of Rs.2,00,000/- was deposited in the Bank out of available cash balance of assessee and for the

balance sum of Rs.54,00,000/-, was received by the assessee in cash by a group company, M/s. Reward Services Ltd., M/s Reward Services Ltd had paid an amount of Rs.54,00,000/- through proper banking channels to one of its suppliers, M/s. Paramount Iron & Steel Traders for supply of goods. However, M/s. Paramount Iron & Steel Traders was not able to supply the goods and also showed their inability to refund the amount of advance received from M/s. Reward Services Ltd through proper banking channels as their bank account has become inoperative. Under this circumstance, M/s. Reward Services Ltd accepted the proposal of the supplier to accept the refund of advance in cash. However, M/s. Reward Services Ltd could not deposit the cash in their only bank account with Tamilnad Mercantile Bank Limited since the said bank refused to deposit such huge amount of cash. As such, M/s. Reward Services Ltd approached the assessee company being its group company to accept this cash on lien basis. Accordingly the assessee received cash of Rs.54,00,000/- and deposit the same in its Bank A/c as such, the source of such cash deposits made by the assessee was cash received from M/s. Reward Services Ltd and the source of this source was M/s. Paramount Iron & Steel Traders and further the source of funds in the hands of M/s Paramount Iron & Steel Traders was funds of M/s. Reward Services Ltd. itself. Since the advance was given to this party by M/s. Reward Services Ltd. Thus, the said cash deposits represents funds of the group company itself and thus cannot be said to be income escaping assessment under any stretch of imagination.

8. The Id. AO further stated that the Ld. AO failed to apply his mind before recording reasons for reopening and issuing the notice u/s 148 of the Act as because no independent enquiry or verification was conducted and the reasons recorded were in mechanical manner. The Ld. AR in this context, relied on the various judicial precedents to support the contention

that reopening based on borrowed satisfaction without any independent verification is unsustainable in law.

(i) CIT Vs. Shree Rajasthan Syntexs Ltd. (2008) 304 ITR 427 (Raj), it was held that of the assessment without any independent application of mind by the AO and merely relying on the information from the Investigation Wing is invalid.

(ii) PCIT Vs. Meenakshi Overseas P. Ltd. (2017) 395 ITR 677 Delhi (SC) Hon'ble Delhi High Court observed that the reasons for reopening assessment must be based on tangible material and proper independent enquiry.

(iii) CIT Vs. Lovely Export (2008) 216 CTR 195 (SC), the Hon'ble Supreme Court held that in case of explanation offered by the assessee, the Ld. AO must verify the same before making the addition u/s 68 of the Act.

9. On the other hand, the Ld. DR supported the orders of the lower authorities and contended that the reopening was valid as per the section 147 of the Act. He further argued that the information from the Investigation Wing provided valid basis for forming a belief that income had escaped assessment.

10. We after hearing the rival submission of the parties and perusing the material available on record. We find that as in the present case, the reasons recorded by the Ld. AO for reopening through entirely based on information received from the Investigation Wing. In the present case, no independent enquiry was conducted and the reasons failed to establish a live link between alleged transaction and escapement of income. The Hon'ble Supreme Court in the case of CIT Vs. Kelvinator India Ltd. (2010)320 ITR 561 (SC) as held that reassessment cannot be based on

mere change of opinion or information received without verification. Similarly, on the issue of loan from M/s Elpro Traders Ltd. the assessee has sufficiently explained the transaction supported by banking documents and ledger. Further, the AO did not appreciate this evidence and made the addition u/s 68 of the Act without properly examining the facts. On this issue, the judicial precedents as in the case of CIT Vs. Vishal Exports Ltd. (2015) 372 ITR 513 (Gujarat) is directly applicable wherein it was held that genuine transaction supported by bank statement cannot be treated as unexplained income in the hands of the assessee.

11. Further, the deposits of cash of Rs. 56 lacs made by the assessee which was adequately explained by the appellant/assessee during the assessment proceedings stating that received from M/s Reward Services Ltd. the source of the funds from Paramount Iron and Steel Traders to whom M/s Reward Services Ltd. made advance for supply of goods. Since this amount of Rs. 54 lacs was received from its group company and assessee accepted this case on lien basis and further amount of Rs. 2 lacs is assessee's own cash balance was deposited in the bank. Therefore, the AO made the addition mechanically manner without rebutting the evidence provided by the assessee.

12. In view of the above facts and discussion and going through the various documents submitted by the assessee and considering the judicial precedents, we find that reopening of the assessment u/s 147 was invalid and alleged the addition made u/s 68 and 69A of the Act were unsustainable in law.

13. Accordingly, we set aside the assessment order and direct the Ld. AO to delete the addition made as in the case in the assessee.

14. In terms of the above, appeal of the assessee is allowed.

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

Kolkata, the 10th October, 2024.

Sd/-
[Manish Borad]
Accountant Member

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated: 10.10.2024.

AK, PS

Copy of the order forwarded to:

- 1 Godavari Multipurpose Articles Pvt. Ltd.
2. Deputy Commissioner of Income Tax, Circle – 7(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches