

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA

श्री राजेश कुमार, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष
Before

SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER

I.T.A. No.: 1122/KOL/2024
Assessment Year: 2012-13

*NSCB Aviation Pvt. Ltd. (Amalgamated Company) Gajanand Barter Pvt. Ltd. (Amalgamating Company).....Appellant
[PAN: AACCG 5248 D]*

Vs.

ITO, Ward-7(1), Kolkata.....Respondent

Appearances:

Assessee represented by: Pramod Kumar Himmatsinghka, AR.

Department represented by: Supriyo Pal, Addl. CIT.

Date of concluding the hearing : August 7th, 2024

Date of pronouncing the order : October 16th, 2024

ORDER

Per Pradip Kumar Choubey, 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 Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 03.04.2024 arising out of the assessment order framed u/s 143(3)/147 of the Act dated 23.12.2019.

1.1. The brief facts of the case of the appellant are that the assessee M/s. Gajanand Barter Pvt. Ltd. is engaged in trading business. The assessee filed its e-return for the AY 2012-13 on 25.09.2012 showing returned income at

Rs. 20,260/- . On being satisfied having reason to believe based on the credible information from the DDIT, Investigation Unit, the case of the assessee company was reopened and selected for scrutiny and notice u/s 148 of the Act was issued. Statutory notices u/s 143(2) & 142(1) of the Act along with questionnaire were also issued. The assessee company did not comply with the requisition called for. The assessee company was also provided with the reasons recorded for reason to believe but there was no positive response from the company though considerable time has already been elapsed, hence, considering the totality of the facts and circumstances of the case the Assessing Officer (hereinafter referred to as ld. 'AO') added the value of penny stock valued at Rs. 5,88,000/- as bogus one and added the same to the total income of the assessee. The said order has been challenged before the ld. CIT(A) wherein also appeal of the assessee has been dismissed.

Being aggrieved and dissatisfied with the impugned order, the present appeal has been preferred.

2. The ld. Counsel for the assessee challenges the impugned order thereby submitting that the reasons recorded by the ld. AO do not demonstrate the live link between the tangible material and formation of belief that income had escaped assessment. According to him, the reasons recorded are vague, arbitrary mere pretense and rumor that is liable to be quashed. The ld. Counsel for the assessee further submits that the reopening proceeding was initiated u/s 147 read with Section 148 of the Act on the purported allegation that shares of M/s. Rocken Fintech Ltd. were sold at Rs. 5,88,000/- not disclosed in the return though in facts said shares were purchased not sold by the assessee at Bombay Stock Exchange online platform paid through banking channels and duly disclosed in books. The ld. Counsel for the assessee further submits that the ld. AO erred in making addition of entire purchase consideration of Rs. 5,88,000/- despite corroborative details of purchases, contract notes, details of bank payment were submitted and explained the shares were acquired at online platform of Bombay Stock

Exchange. The ld. Counsel for the assessee filed the following papers:

1. Copy of the Audited statement of accounts for the year ended 31.03.2012
2. Copy of reason recorded and approval
3. Copy of Inspector's Report for asst, year 2012-13
4. Copy of purchase contract note issued by BSE broker
5. Copy of relevant page of HDFC bank statement evidencing the payment of purchase amount
6. Copy of scrip-wise purchase details as per schedule of Profit & Loss a/c.

2.1. Contrary to that, ld. D/R supports the impugned order thereby submitting that assessee did not give any positive response before the ld. AO on the questionnaire put by the ld. AO nor he brought papers before the ld. CIT(A) though only written submissions have been filed before the ld. CIT(A). Hence, the order passed by the ld. AO and the ld. CIT(A) do not require any interference.

3. We have perused the records and the grounds of appeal raised by the assessee. It is the case of the assessee that the case of the assessee company was reopened and selected for scrutiny being satisfied and having reason to believe based on the credible information. It is also not in dispute that statutory notices u/s 143(2) & 142(1) of the Act along with questionnaire annexed with the notice u/s 142(1) of the Act were issued but the assessee company did not comply with the requisition called for by the ld. AO. We have perused the paperbook and find that copy of reasons recorded and approval have been filed by the assessee before us and on a perusal, it appears to us that on the basis of information collected by the ld. AO, Inspector was deputed to the given address of the assessee to ascertain whether the company is actually based at the given address and it was reported that no such company

was available at the given address of the assessee. We further find that in the notice u/s 147 of the Act it has also been mentioned that the enquiry made by the ld. AO as sequel to information collected/received and on enquiry it found that assessee company is one of the beneficiaries who have traded in the above scrip but it has not accounted for the said transaction in its return of income. As we have already discussed that before the ld. AO, the assessee did not comply with the requisition called for and the order passed by the ld. AO in absence of any explanation from the assessee. Now come to the order of the ld. CIT(A), it appears to us that during the appellate proceeding the appellant/assessee has filed its written submission and challenged the reopening as well as addition of Rs. 5,88,000/-. The ld. Counsel for the assessee submits that the shares were not sold whereas they were purchased and he filed the copy of purchase contract note issued by BSE broker, copy of the relevant page of the HDFC Bank statement evidencing the payment of purchase amount. We have gone through the order of the ld. CIT(A) and it appears to us that on the issue of reopening of the assessment, he gave his finding that field enquiry was conducted through the Inspector and he brought in the notice of the ld. AO that no such company by name M/s. Rocken Fintech Ltd. existed. It is also to be noted that no evidence has been furnished by the appellant on being asked the questionnaire by the ld. AO before the ld. AO. The ld. CIT(A) has also held that there is nothing brought by the appellant before the ld. AO to rebut his finding effectively and on these grounds appeal of the assessee has been dismissed. The ld. Counsel for the assessee before us filed the following papers which are copy of audited statement of the accounts, copy of the Inspector's report for AY 2012-13, copy of purchase contract note issued by BSE broker and copy of the relevant page of the HDFC Bank statement and further copy of scrip-wise purchase details as per the schedule of profit and loss account. Since the order passed by the ld. AO in absence of the assessee as according to the ld. AO there was no positive response from the assessee company for the questionnaire called for. We are in this view that the matter has to be adjudicated afresh by the ld. AO

I.T.A. No.: 1122/KOL/2024
Assessment Year: 2012-13
NSCB Aviation Pvt. Ltd.
(Amalgamated Company)
Gajanand Barter Pvt. Ltd.
(Amalgamating Company).

after going over the documents filed by the assessee. Accordingly, the order of the ld. AO and the ld. CIT(A) are hereby set aside. The case is restored to the file of the ld. AO as the ld. CIT(A) confirmed the order of the ld. AO only on this ground that there was no positive evidence brought by the assessee before the ld. AO. The ld. AO is directed to hear the case of the assessee afresh after going over the documents and the issue raised by the assessee and pass a reasoned order thereafter.

4. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 16th October, 2024.

Sd/-

[Rajesh Kumar]

Accountant Member

Dated: 16.10.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. NSCB Aviation Pvt. Ltd. (Amalgamated Company) Gajanand Barter Pvt. Ltd. (Amalgamating Company), C/o. P.K. Himmatsinghka & Co., 41, B.B. Ganguly Street, Central Plaza, 2nd Floor, Kolkata, West Bengal, 700012.**
- 2. ITO, Ward-7(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata