

आयकर अपीलीय अधिकरण, कोलकाता पीठ “एसएमसी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 1415/Kol/2024
Assessment Year: 2011-12

M/s Star Dealcom Pvt. Ltd. (PAN: AAOCS 6158 G)	Vs.	ITO, Ward-3(1), Suri
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	08.08.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	09.10.2024
For the Appellant/ निर्धारिती की ओर से	Shri S.M. Surana, Advocate
For the Respondent/ राजस्व की ओर से	Shri Supriya Pal, Addl. CIT (D.R)

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the “Ld. CIT(A)”) dated 09.05.2024 for the AY 2011-12.

2. Issue raised in ground no. 1 is against the reopening of assessment initiated on the basis of report of investigation wing of the department without any independent application of mind or bringing on record any tangible record in invalid and bad in law and therefore the entire assessment is liable to be quashed.

3. Facts in brief are that the assessee filed return of income on 30.09.2011 declaring total income of Rs. 12,980/- which was processed by CPC on 23.01.2012 u/s 143(1) of the Act. Thereafter the information was received by the AO from DDIT (Inv), Unit-1(1), Kolkata about the receipt of Rs. 15.00 lacs by the assessee firm from Hector Dealers Pvt. Ltd. which is a shell entity in which Shri Chandresh Kumar Jain was acting as dummy director working at the instance of one entry operator Shri Naresh Kumar Jain. The said information revealed that the assessee is a beneficiary of Rs.15.00 lacs from the said shell company and consequently the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 30.03.2018 after taking due approval from the competent authority. The said notice was complied with by filing return of income on 14.09.2018 declaring total income of Rs. 12,980/-. Thereafter the statutory notices were duly issued and served on the assessee . Thereafter the assessee was called upon to explain the said entry which was duly complied with by the assessee by furnishing necessary details/documents before the AO. The AO, in order to verify the transaction, also issued notice u/s 133(6) of the Act to Branch Manager, United Bank of India, Bolpur Branch which was responded and complied with by the Bank by furnishing the details/statement as called for. The AO found on the perusal of the bank statement that the bank account was opened in the month of August, 2010 and thus did not cover entire financial year right from the beginning and noted that the statement of bank account started from 5th August, 2010. Thereafter the AO also referred to change of director of the assessee company. The AO also sought a clarification/e details regarding the transaction of Rs. 15,00,000/- on 10.05.2010 which was transferred to assessee account i.e. Star Dealcom Pvt. Ltd. account in Kotak Mahindra Bank, Salt Lake Branch, Kolkata from Hector Dealers Pvt. Ltd. A/c no. 01260 vide cheque no. 00000000003 dated 10.05.2010. The assessee in response to said notice from the AO denied any such transaction. Thereafter the AO noted that response received from Kotak Mahindra Bank, Salt Lake Branch also did not yield any fruitful result and after extracting the reply of the assessee at page 6 wherein the assessee denied to have received amount from the said company and further stating that the equity shares were issued to two related persons who were directors of the assessee namely,

Ajit Das and Abhijit Das for which the assessee received money from them details whereof is fully given on page no 8 of the paper book which is an annexure to the annual audited accounts and accordingly made allotment of shares to them. The necessary return of allotment was filed with ROC a copy of which is furnished as page no. 10 to 14. However, the AO, by brushing aside the reply of the assessee merely acted on the information received from DDIT(Inv), Unit -1(1) Kolkata without correctly appreciating the reply of the assessee, treated the amount so received of Rs. 15,00,000/- as unexplained and added the same to the income of the assessee. In the assessment framed u/s 147/143(3) of the Act dated 29.12.2018.

4. In the appellate proceedings, the Ld. CIT(A) simply reiterated the findings as given by the AO and thus confirmed the addition.

5. After hearing the rival contentions and perusing the material on record, we find that as per the reasons recorded, the AO has received information from DDIT(Inv), Unit-1(1), Kolkata to the effect the assessee was a beneficiary of accommodation entry of Rs. 15,00,000/- received from Hector Dealers Pvt. Ltd. The AO on the said basis reopened the case of the assessee u/s 147 of the Act by issuing notice u/s 148 of the Act dated 30.03.2018. We find that the AO upon receiving an intimation from DDIT(Inv) has not carried out any further enquiry or investigation to ascertain the veracity of the said information. In fact, during the year, the assessee has not received any loan from Hector Dealers Pvt. Ltd. but received money from two related parties as share application money namely Abhijit Das Rs. 13,78,000/-, Ajit Das Rs. 1,30,000/- aggregating to Rs. 15,80,000/- which was duly shown in the balance sheet a copy of which is filed at page 4 to 9. We find that the share application money received by the assessee was received from two allottees the details whereof is given in the balance sheet itself at page 8 of PB. We have also examined the allotment made by the assessee in favour of these allottees and return of allotment filed in form 2 with registrar of the companies which duly states that shares were allotted in favour of Ajit Das and Avijit Das. Therefore, the reopening of assessment has made by the AO on any valid basis and is only based on the borrowed satisfaction of the Investigation Wing without any

independent application of mind to the said information. In our opinion, the reference to the information received from DDIT(Inv) in the reason recorded is just a piece of information which needs to be acted upon at the level of AO in order to form a belief but the AO has simply proceeded to reopen the assessment on the basis of said information on wrong facts as we find that the assessee has not received any money from the said shell party. So much so even during the course of assessment proceedings when the assessee denied to have any such transaction with the said party by filing corroborative evidences in the form of bank statement etc and various other documents comprising audited balance sheet, allotment letter, return filed with ROC and details of share application money etc, the AO did not bother to examine those evidences and made addition on the basis of information received from DDIT(Inv) treating the said money as unexplained investment. Under these facts and circumstances, we are not in a position to sustain the reopening of assessment by the AO on the ground of being purely on borrowed satisfaction and without any independent application of mind. The case of the assessee finds support from the decisions of Hon'ble Delhi High Court in the case of CIT vs. SFIL Stock Broking Ltd. in [2010] 325 ITR 285 (Del) and in the case of ACIT vs Meenakshi Overseas Pvt. Ltd. [2017] 82 taxmann.com 300 (Del), wherein it was held that the AO has to apply his mind to the information and independently arrived at a belief that income had escaped assessment otherwise the reopening of assessment cannot be sustained.

5.1. The second plea raised before us by the Counsel of the assessee was that if something is alleged by the AO to have happened then it is the onus on the AO to prove that the said allegation but in the present case, the AO has failed to prove the allegation. In defense of argument the ld. A.R relied on the decision of Co-ordinate Bench in the case of Himanshu Botadara HUF vs. ITO in ITA Nos. 155 & 156/Ind/2023 for AY 2011-12 & 2012-13 .

5.2. Considering the above facts and circumstances of the case and in the light of ratio laid down in the above decision , we are inclined to quash the re-opening of assessment and also the consequent order passed by the AO.

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

Order is pronounced in the open court on 9th October, 2024

Sd/-

Sd/-

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 9th October, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Star Dealcom Pvt. Ltd., Bhubandanga, Santiniketan Road, Bolpur, Birbhum-731204.
2. Respondent – ITO, Ward-3(1), Suri
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata