

आयकर अपीलीय अधिकरण, कोलकाता पीठ "बी", कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA
श्री राजेश कुमार, लेखा सटस्य एवं श्री संजय शर्मा, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 1192/Kol/2023
Assessment Year: 2018-19

Castle Commodities Pvt. Ltd. (PAN: AABCC 2788 H)	Vs.	ITO, Ward-6(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	21.08.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	18.10.2024
For the Appellant/ निर्धारिती की ओर से	Shri Sunil Surana, A.R
For the Respondent/ राजस्व की ओर से	Shri Abhijit Kundu, CITDR

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 27.03.2023 for the AY 2018-19.

2. We have heard both the sides and perused the condonation petition along with the affidavit of the director of the assessee company Shri Radha Kant Tiwari. We observe that the reasons attributable to the delay were beyond the control of the assessee

as the same were stated to be on account of employee Shri Ajay Pratap Singh leaving the job. We note that he was stated to be looking after the tax matters and has given his email and phone in form 35 filed before the first appellate authority. Therefore the appellate order passed by the Id CIT(A) could not be served upon the assessee. It was only on 27.09.2023 when the new employee visited the portal of the department, it was found that the order has already been passed by the Id CIT(A) on 27.03.2023. In our opinion the delay of 166 days is for sufficient and bonafide reasons and is accordingly condoned.

3. Issue raised in ground no. 1,2,3 and 4 is against the confirmation of addition of Rs. 91,96,15,112/- as made by the AO on account of unexplained investments u/s 69 of the Act.

4. Facts in brief are that the assessee filed return of income on 29.03.2019 declaring total income at NIL. The case of the assessee was selected for scrutiny and statutory notices were duly issued and served on the assessee. Pertinent to state that the assessee company engaged in the business of investment of share / commodity and also advance loan in the ordinary course of business. During the course of assessment proceedings, the AO observed that there were huge transactions in the bank of the assessee which were stated by the assessee to be only loan given and repayment thereof. The AO after examining the issue during the course of assessment proceedings came to the conclusion that the assessee has made unexplained investments by making loan to M/s Multiplier Enterprises Pvt. Ltd. of Rs. 44,68,00,000/- which was denied by the said party when the AO issued notice u/s 133(6) of the Act which was replied by the assessee by submitting that the said loan was advanced through banking channel and a bank statement and details of cheques were already submitted. Similarly the loan given to parties as stated in para 2,3 and 4 aggregating to Rs. 10,78,83,443/- were also added on the ground that these parties have not received notice issued u/s 133(6) of the Act by the AO. Accordingly, the said amount was also added as unexplained investments. Similarly, the AO added the loan transactions given by the assessee to various parties which

according to the AO were not responded u/s 133(6) as unexplained investment u/s 69 of the Act. Thus making the correct addition of Rs. 91,96,15,112/-.

5. In the appellate proceedings, the Ld. CIT(A) simply affirmed the order of AO by reproducing the assessment order verbatim and noted that the assessee had been given sufficient number of opportunities of being heard during the course of assessment proceedings. However, the assessee could not prove the same and justify the addition.

6. The Ld. A.R vehemently submitted before us that the order passed by the Ld. CIT(A) confirming the order of AO is wrong and against the provision of the Act. The Ld. A.R submitted before us that the AO had added the amount of loan advanced by the assessee u/s 69 of the Act which is not possible under the Act. The Ld. A.R submitted that Section 69 deals with those investments which are not recorded by the assessee in the books of account if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not in the opinion of the AO satisfactory, the value of investment may be deemed to be the income of the assessee of such financial year. The Ld. A.R submitted that the investment added by the AO as unexplained investment u/s 69 of the Act were duly accounted in the books of accounts with proper source. However, the AO without doubting the liability side, balance sheet added the loan advanced by the assessee to various parties which is wrong and against the provision of the Act and may kindly be deleted. The Ld. CIT(A) simply affirmed the order by reproducing the appellate order thereby confirming the addition on total misappropriation of facts and law. The Ld. A.R therefore, prayed that the order of Ld. CIT(A) may be set aside and may be directed to delete the addition.

7. The Ld. D.R on the other hand relied on the authorities below.

8. After hearing the rival contentions and perusing the material on record, we find that in this case the AO has added the amount shown by the assessee in the balance sheet a loan advanced during the year as well as in the earlier years. In our opinion, the provision of Section 69 is not attracted where the assessee has shown the loan of

investment in the books of account maintained by the assessee during the year. In the current year, the assessee has fully disclosed the advances loan/investments made during the year as well as made in the earlier years in the books of account which the AO has doubted and added u/s 69 of the Act. In our opinion, the said act of AO is totally wrong and against the provision of the Act. We note that the AO has nowhere doubted the source of such investments by way of loan advances/ investments and has doubted the investments only which is incorrect and cannot be sustained. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to deleted the addition.

9. Issue raised in ground no. 5 is against the confirmation of addition of Rs. 27,42,39,740/- towards estimated capital being 20% of total sales of Rs. 137,11,98,698/- on assumption basis.

10. Facts in brief are that the AO during the course of assessment proceedings observed that the assessee has sold shares worth Rs. 137,11,98,698/- during the year on which no income or loss has been shown during the year. The AO stated that the said transaction to be not tenable and estimated the income @20% on the said sales, thereby making the addition of Rs. 27,42,39,740/-.

11. The Ld. CIT(A) in the appellate proceedings simply affirmed the order of AO.

12. The ld. A.R vehemently submitted before us that the addition made by the AO sans any valid or cogent basis. Undisputedly the assessee has sold shares worth Rs. 137,11,98,698/- on which no income or loss are shown. The Ld. A.R argued that in respect of bringing any cogent material on record to corroborate the estimation of income. The AO simply acting his whims and fancies and on surmises estimated the income @20% without any basis which is against the provision of the Act as the tax limit on the income earned by the assessee and not otherwise. The Ld. A.R therefore prayed that the order of Ld. CIT(A) may be set aside and the AO may be directed to delete the addition.

13. The Ld. D.R on the other hand relied on the order of authorities below.

14. After hearing the rival contentions and perusing the material on record, We find that the AO has simply estimated the income @20% which is without any substantive and corroborative basis. In our opinion, the addition cannot be sustained which is made on surmises, presumption and assumption. If at all, the AO has to make the addition, he should have brought on record the cogent material to corroborate the estimation. Similarly investment which AO has failed to do accordingly. Accordingly, we are of the view that no such addition can be made on presumption basis. Therefore, we set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

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

Order is pronounced in the open court on 18th October, 2024

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

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

Dated: 18th October, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Castle Commodities Pvt. Ltd., 2nd Floor, 14, Netaji Subhas Road, Kolkata-700001
2. Respondent – ITO, Ward-6(1), Kolkata
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