

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री जगदीश, लेखक सदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.437/Chny/2023
निर्धारण वर्ष /Assessment Year: 2016-17

M/s. Reform Realty & Logistics
Development Pvt. Ltd.,
No.33, Rutland Towers,
Shafee Mohammed Road,
Chennai – 600 006.
[PAN: AAFCT 3302G]

Vs. The Dy. Commissioner of
Income Tax,
Central Circle-1(2),
Chennai.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri Rakesh Joshi, C.A
: Shri R. Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of Hearing

: 07.08.2024

घोषणा की तारीख /Date of Pronouncement

: 25.10.2024

आदेश / ORDER

PER JAGADISH, A.M :

Aforesaid appeal filed by the assessee for Assessment Year (AY) 2017-18 arises out of the order of Learned Commissioner of Income Tax (Appeals)-18, Chennai [hereinafter "CIT(A)"] dated 06.03.2023 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 153A of the Income-tax Act, 1961 (hereinafter "the Act") dated 25.09.2021.

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2. The grounds of appeal raised by the assessee are as under:

“1. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in making an additions in the assessment completed U/s.143(3) r.w.s. 153A of the Act without any incriminating documents is being found during the course of search.

2. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in making an addition of Rs. 10,00,000/- u/s.68 of the Income Tax Act, 1961, by treating the share capital as alleged unexplained cash credit, without considering the facts & circumstances of the case.

3. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in invoking the provision of Section 115BBE of the Act, without considering the facts & circumstances of the case.”

3. The brief facts of the case are that a search u/s. 132 of the Act has been conducted at the residential/business premises in the cases of Golden Shelters Pvt. Ltd., NKV Krishna Group on 16.10.2019 and the office premises of the assessee-company being the group concern was also covered in the search operation. The A.O initiated assessment proceedings u/s. 153A of the Act and made the addition of share capital introduced by Shri NKV Krishna and Smt. K Preetha of Rs.5,00,000/- each in cash u/s. 68 of the Act. The A.O in the assessment order has noted that during the course of search and seizure action it was found that there are 137 concerns for which books of accounts are maintained in the Rutland Towers office and Mr Sarvan Kumar who was maintaining the tally data stated the cash

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deposit and introduction of share application money. It was further stated that Sri Bagavan, Shri NKV Krishna and Smt. Preetha Krishna were conducting wellness programmes, homams, meditations and other related activities and from these activities unaccounted income was generated by way of cash. A pen drive was also found and seized from the residence of Shri Badri Narayan Kota, friend of Shri NKV Krishna and director of group company handling unaccounted transactions and unaccounted cash of the group. Shri Saravana Kumar, Accounts Manager of the group company has explained the modus operandi and stated that unaccounted cash were brought in either as the share capital or advance/unsecured loan. The A.O has made the addition of share capital introduced by Shri NKV Krishna and Smt. Preetha of Rs. 5,00,000/- each in cash in the books of account u/s. 68 of the Act. In appeal before Ld. CIT(A), assessee has submitted that the share capital of Rs 10,00,000 in the name of Shri NKV Krishna and Smt. K . Preetha has already been recorded in the books of account of the company and therefore, the addition made by the Ld. AO is not based on any incriminating material and therefore should be deleted in order passed u/s 153A. The Ld. CIT(A) has confirmed the addition holding that the addition made was based on the pen drive seized from the residence of Shri Badri Narayan Kota, and statement made during the search by various persons revealing

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the modus operandi that unaccounted cash receipts was utilized for investment in various companies, in the form of share capital, therefore the addition made emanated from the incriminating material found during the course of search. The Ld. CIT(A) confirmed the addition made u/s. 68 of the Act as nature and source has not been proved and affirmed that it is to be taxed at special rate as per provisions of section 115BBE.

4. The Ld. Authorized Representative (A.R) of the assessee before us has argued that the share capital of Rs. 10 Lakhs has already been recorded in regular books of account, therefore in view of the decision of Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell (P.) Ltd. [2023] 454 ITR 212 (SC), addition u/s 68 on the basis of regular books of account cannot be sustained. The Ld. AR has argued that the addition has been made on the basis of regular books of accounts, but not on the basis of incriminating material. The Ld. AR has also took us through various annexures, seized documents to impress upon the point that the assessee company name is not mentioned in the documents of details of introducing unaccounted cash in the share application money and unsecured loan/advances. The Ld. CIT(A) therefore prayed for deletion of addition made u/s 68 in order passed u/s 153A.

5. The Ld. Departmental Representative (DR), on the other hand, supported the order of Ld. CIT(A) and argued that the A.O has made the addition on the basis of pen drive seized during the search and statement made by the persons maintaining the account elaborating the modus operandi of generation of unaccounted cash and their introduction in the company as a share capital.

6. We have heard the rival submissions, and perused the materials available on record. The assessee-company as a part of group company of NKV Krishna group, where search was conducted on 16.10.2019 u/s 132 of I T Act. The A.O has made the addition of share capital of Rs. 5,00,000/- each introduced by Shri NKV Krishna and Smt. Preetha u/s. 68 of the Act. The Ld. CIT(A) has noted that the assessee has not been able to explain the source of cash deposit and the nature of cash recorded in the books of account and confirmed the addition. The Ld AR took us to the seized documents of Annexure-I, II, III and IV where details of introducing unaccounted cash into share application money and unsecured loan /loan and advance was listed and assessee company name does not figure in any of these documents. The AO has made the addition based on the general statement that unaccounted cash was introduced as share capital without referring to any specific documents. The documents produced

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by the Ld DR as incriminating material was the copy of cash book and ledger account of Shri NKV Krisha and Preetha ji, which are entries of regular books of account . We therefore hold that addition of share capital of Rs 10,00,000/ has not been made based on incriminating material found during search The AO in the assessment order u/s 153A has assessed income at Rs 9,40,000/- against returned loss of Rs 60,000 , thus making only addition of share capital of Rs 10,00,000 u/s 68 of the Act. Therefore, in view of Honorable Supreme Court decision in the case of Abhisar Buildwell (P) Ltd addition cannot be sustained in present case without there being incriminating material. We accordingly delete the addition of share capital of Rs.10,00,000 u/s 68 of Income Tax Act made by the AO .

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

Order pronounced on 25th October, 2024.

Sd/-
(यस यस विश्वनेत्र रवि)
(SS Viswanethra Ravi)
न्यायिक सदस्य / Judicial Member

Sd/-
(जगदीश)
(Jagadish)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 25th October, 2024.

EDN/-

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आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF