

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

I.T.A. No. 1294/Kol/2024
Assessment Year: 2011-12

ACIT, Central Circle-2(1), Kolkata	Vs.	Raghu Management Pvt. Ltd. (PAN: AACCR 8355 E)
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	16.10.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	08.11.2024
For the Appellant/ निर्धारिती की ओर से	Shri S. K. Tulsian, Advocate Smt. Jyoti Dugar, CA
For the Respondent/ राजस्व की ओर से	Shri Praksh Nath Barnwal, CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-26, Kolkata (hereinafter referred to as the "Ld. CIT(A)") dated 18.03.2024 for the AY 2011-12.

2. At the outset, we note that there is a delay in filing the appeal by 20 days. After hearing both the sides we find that the delay is for sufficient and bonafide reasons and therefore condoned.

3. Issue raised in ground no. 1 is against the deletion of addition of Rs. 2,80,00,000/- by the Ld. CIT(A) as made by the AO u/s 68 of the Act by relying on the decision of Hon'ble Supreme Court in PCIT, Central-3 vs. Abhisar Buildwell Pvt. Ltd. by holding that the additions are not linked to any incriminating material without appreciating the fact that the addition is based on the statement of entry provider taken on oath u/s 131 on the date of search / survey carried out on 24.08.2016 in "Himadri Group of cases".

4. Facts in brief are that the assessee filed return of income u/s 139(1) of the Act on 28.09.2011 declaring total income of Rs. Nil. Thereafter a search action u/s 132 of the Act was conducted on 24.08.2016 in the office premises of the assessee at 8th Floor, Room no. 15, Fortuna Tower, 23A, Netaji Subhash Road, Kolkata-700001. Accordingly, notice u/s 153A of the Act was issued on 17.05.2017. The assessee filed return of income in compliance to notice u/s 153A of the Act on 27.06.2017 declaring total income of Rs. Nil. Thereafter a statutory notices were duly issued and served on the assessee. During the course of assessment proceedings, the AO called for various information / details from the assessee which were duly complied and examined by the AO during the assessment proceedings. Finally an addition was made on the basis of statement recorded during the course of search/survey on 24.08.2016 in the case of Himadri Group wherein the entry provider admitted to have provided accommodation entries in the form of share capital/ share premium to the assessee company. The details of this company is given from Sl. No. 3 to 7 of the paper book. The addition was made by the AO on the ground that the assessee could not prove the identity, creditworthiness of the parties and genuineness of the transactions of five investor companies and accordingly the addition was made u/s 68 of the Act to the tune of Rs. 2,80,00,000/- in the assessment framed u/s 143(3) read with Section 153A of the Act. Pertinent to state that during the course of search on the assessee no incriminating material was found as apparent from the record qua these five investors from whom the assessee has received share application money aggregating to Rs. 2,80,00,000/- .

5. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by holding that in case of completed/unabated assessment year the addition can only be made by the AO on the basis of incriminating material found during the course of search. In the present case, the AO has made the addition on the basis of the auditor's report, submissions of the assessee. Thus, the Ld. CIT(A) after following the decision of Hon'ble Supreme court in the case of *Pr. CIT Vs. Abhisar Buildwell (P) Ltd. [2023] 149 taxmann.com 399 (SC)* allowed the appeal of the assessee by holding that no incriminating material found during the course of search. The Ld. CIT(A) has also recorded his observations that the completed /unabated assessment can be reopened by the AO in exercise of power u/s 147 read with Section 148 subject to condition as envisaged in those Section as has been laid down by the Hon'ble Apex court in above decision.

6. After hearing the rival contentions and perusing the material on record, we find that a search action u/s 132 of the act was conducted on the assessee on 24.08.2016. The assessee filed the return of income on 28.09.2011 declaring total income at Nil. Apparently no proceedings were pending on the date of search and therefore the assessment has attained finality or was unabated on the date of search. Therefore, in terms of provisions of section 153A of the Act, the AO is empowered to reopen the case of six preceding assessment years. However, a further restriction has been imposed on the jurisdiction of the AO to make addition in those six assessment years which are completed/unabated on the date of search on the basis of incriminating material found during the course of search. In other words, the AO has the jurisdiction to make addition in case of unabated assessment years on the date of search only on the basis of incriminating material seized during the course of search. In our opinion, the AO on the examination of auditor's report, reply of the assessee and post search enquiries found that the assessee has taken share application money from five investor companies the details whereof are given in page 3 of the assessment order from Sl. No. 3 to 7. The AO has also relied on the statement recorded during the course of search/survey on Himadri Group of the entry providers that they were engaging accommodation entries

in the form of share capital/share premium to the beneficiary which was conducted on 24.08.2016. In our opinion, the statement recorded during the course of search on third party/ the entry providers who are stated to have admitted providing accommodation entries to the assessee is not any incriminating material. Even the statement recorded during the course of search on the assessee has no evidentiary value unless corroborating material is there and only then the statement coupled with the evidences found during the course of search could constitute the incriminating material. In our view any material found during the post search proceedings or during the assessment proceedings would not qualify to be the incriminating material which could be used by the AO to make the addition in case of completed/unabated assessment. Consequently, we do not find any reason to interfere with the order of Ld. CIT(A) which is a reasoned and speaking one passed after following the Hon'ble Apex Court decision in the case of *Pr. CIT Vs. Abhisar Buildwell (P) Ltd(supra)*. Accordingly, we dismiss the appeal of the revenue by upholding the order passed by the Ld. CIT(A).

7. In the result, the appeal of the revenue is dismissed.

Order is pronounced in the open court on 8th November, 2024

Sd/-

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

Sd/-

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

Dated: 8th November, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- ACIT, Central Circle-2(1), Kolkata
2. Respondent – Raghu Management Pvt. Ltd., 23A, 8th Floor, Room No. 15,
Netaji Subhash Road, BBD Bag, Kolkata-700001
3. Ld. CIT(A)- 26, Kolkata
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata