

आयकर अपीलीय अधिकरण  
दिल्ली पीठ "ए", दिल्ली  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री नवीन चंद्र, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A", DELHI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

आअसं.1301/दिल्ली/2017 (नि.व. 2010-11)  
ITA No.1301/DEL/2017 (A.Y.2010-11)

Assistant Commissioner of Income Tax,  
Central Circle-1, r. No. 334, 3<sup>rd</sup> Floor, E-2,  
ARA Centre, Jhandewalan Extension,  
New Delhi 110055

..... अपीलार्थी/Appellant

बनाम Vs.

M/s. Sahara Prime City Ltd.,  
R/o Sahara India Centre, 2- Kapoorthala Complex,  
Aliganj, Lucknow, UP  
PAN: AABCS-7893-P

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Ritu Sharma, CIT-DR  
प्रतिवादीद्वारा/ Respondent by : Shri Ajay Vohra, Senior Advocate with  
Ms. Shaily Gupta,  
Shri Kunal Pandey, Advocates and  
Shri Archit Kabra, Chartered Accountant

सुनवाई की तिथि/ Date of hearing : 13/08/2024

घोषणा की तिथि/ Date of pronouncement: : 08/11/2024

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-23, New Delhi (hereinafter referred to as 'the CIT(A)') dated 23.12.2016, for assessment year 2010-11.

2. The Revenue in appeal has assailed the order of CIT(A) on followings grounds:

*"1. The order of Ld. CIT(A) is not correct in law and on facts.*

*2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law on facts in its decision for quashing the assessment order u/s 147/148 r.w.s. 143(3) of the Income Tax Act, 1961.*

*3. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.28,00,32,120/- made by AO u/s 37 of the Income Tax Act, 1961."*

3. Ms. Ritu Sharma, representing the department submits that the CIT(A) has erred in quashing assessment merely on the ground that reasons recorded for reopening the assessment do not indicate independent application of mind by the Assessing Officer (AO). She submitted that though the initial information was received by the AO from the Additional Director of Investigation Wing, but the AO has also independently applied his mind and has recorded reasons to believe that income in the case of assessee has escaped assessment. The Id. DR prayed for quashing findings of the CIT(A) and upholding validity of assessment proceedings.

3.1. On merits of the addition, the Id. DR vehemently supported the findings of the AO in making disallowance of payments aggregating to Rs.28,00,32,120/- to M/s. Telestar Packaging P. Ltd., and M/s. Alishan Estates Pvt. Ltd.

4. Per contra, Shri Ajay Vohra appearing on behalf of the assessee strongly supported the impugned order and prayed for dismissing appeal by the Revenue. The Id. Counsel for the assessee submits that a bare perusal of reasons recorded for reopening would show that the AO has not independently applied his mind before recording the reasons for reopening. The assessment has been reopened merely on

borrowed information. The Id. Counsel for the assessee further submitted that the assessee had filed objections before the AO on the reasons recorded for reopening of assessment u/s. 147 of the Income Tax Act, 1961(hereinafter referred to as 'the Act'). The same are at pages 81 to 83 of the paper book. It was categorically stated therein that the reasons on which assessment has been reopened has already been examined by the AO during assessment proceedings for AY 2011-12. A specific query in respect of the payments made to Sahara Prime City Ltd. and Telestar Packaging P. Ltd., was raised by the AO, the assessee in response to the said query furnished all documentary evidences to substantiate transactions with the above mentioned parties. No expenditure was claimed by the assessee against these payments during the period relevant to assessment year 2010-11. Hence, there was no question of making disallowance in respect of said payments in the impugned assessment year. The very reason for reopening the assessment for AY 2010-11 is ill founded.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. The assessee/respondent filed its original return of income for AY 2010-11 on 04.10.2010 declaring total income of Rs.40,59,90,641/-. The assessee thereafter filed revised return of income on 03.02.2012 declaring total income of Rs.41,56,39,018/-. The assessment u/s. 143(3) of the Act was made vide order dated 27.03.2014. Thereafter on the basis of information received from Investigation Wing, assessment for AY 2010-11 was reopened and notice u/s. 148 of the Act was issued to the assessee on 01.04.2014. In response to the said notice, the assessee filed revised return on 25.01.2014 declaring gross total income of Rs.41,56,39,018/-.

6. The reasons recorded for reopening as provided to the assessee are as under:

*“Information has been received from Addl. Director of Income-tax (Inv) (Hqsurs.) (Amin.), New Delhi in this office about transactions between M/s. Sahara Prime City Ltd, and M/s. Telestar Packaging Pvt. Ltd. 156A, Lenin Sarani, Kolkata-7000013 of an amount of Rs. 8,00,32,120/. Similar information has also been received about transactions between M/s. Sahara Prime City Ltd, and Alishan Estates Pvt. Ltd, 156A, Lenin Sarani, 3rd floor, Kamalalaya Centre, Kolkata of Rs. 20,00,00,000/- during the F.Y. 2009-2010 relevant to A.Y. 2010-11.*

*Therefore, I have reason to believe that income in the case of the assessee has escaped assessment for A.Y. 2010-11 and it is a fit case for issue of notice u/s 148 of Income Tax Act, 1961.”*

7. A bare perusal of the above reasons reveal that the AO has reopened assessment solely on the basis of information received from the Investigation Wing. The section 147 of the Act mandates the Assessing Officer to record reasons to believe that any income chargeable to tax has escaped assessment. It is no more *res intigra* that borrowed satisfaction for reopening the assessment vitiates reassessment proceedings. A plain reading of the reasons recorded by the AO, unambiguously reflect that the AO has reopened the assessment based on the information received from the Investigation Wing of the Department. The “reasons to believe” are not of the AO. The assessment is liable to be quashed on this ground alone. We find no infirmity in the findings of the CIT(A) on this issue. We see no merit in ground no. 2 of appeal; hence, the same is dismissed.

8. As regards ground no. 3 of appeal, the contention of assessee is that the assessee has not claimed expenditure against the payments made to Telestar Packaging P. Ltd., & Sahara Prime City Ltd., during the relevant period. The CIT(A)

on this issue has recorded finding of fact that, *“the impugned payments to the above two companies were advances for execution of work and the said advances were not capitalized in work-in-progress and therefore there is no reason otherwise also for the AO’s conclusion that the said payments are to be exclude from WIP, thus rendering the finding and conclusion of the AO a falsity and nullity”*. The Revenue has not been able to controvert the said findings of the CIT(A). In the absence of any contrary material, we see no reason to disturb the findings of CIT(A) on merits of the addition. Ergo, ground of appeal no. 3 is dismissed.

9. In the result, impugned order is upheld and appeal of the Revenue is dismissed being devoid of any merit.

Order pronounced in the open court on Friday the 08<sup>th</sup> day of November, 2024.

Sd/-

(NAVEEN CHANDRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 08/11/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI