

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "A" Bench, Mumbai.

Before Smt. Beena Pillai (JM) & Shri Omkareshwar Chidara (AM)

I.T.A. No. 4518/Mum/2024 (A.Y. 2012-13)

M/s. Athena Constructions Ltd. A- 203, Shyam Kamal, Tejpal Road, Vile Parle East Mumbai-400 057. PAN : AAJCA3490N	Vs.	ITO Ward 9(1)(4) 205, Aayakar Bhavan, M.K. Road, Mumbai 400 020.
(Appellant)		(Respondent)

Assessee by	Shri Gaurav Kabra
Department by	Dr. K.R. Subhash
Date of Hearing	03.10.2024
Date of Pronouncement	29.10.2024

ORDER

Per Omkareshwar Chidara (AM) :-

In the above cited appeal, appellant company filed return of income for A.Y. 2012-13 declaring a total income of Rs. 1,73,868/- and the same was processed under section 143(1) of the Income Tax Act (Act for short) subsequently.

2. The assessment was originally completed u/s. 143(3) read with section 147 on 26.12.2017 assessing total income at Rs. 41,73,870/- after making an addition of Rs. 40 lakhs on account of unexplained cash credit under section 68 of the Act. Subsequently, information was received that the appellant company received funds from M/s. Asan Investment & Financial Services Pvt. Ltd. as share application money and the same is not a genuine transaction. The learned Assessing Officer (AO for short) has mentioned that the appellant company was found to be one of the beneficiaries who received funds from M/s. Kurmi Developers Pvt. Ltd., a company managed and controlled by Shri Prakash Jajodia, who is an entry provider. After receiving information, the Ld. AO has reopened the assessment by issuing notice u/s. 148 of the Act and started reassessment proceedings. A Notice

u/s. 148 of the Act was issued on 27.3.2019 and the same was duly served through post as well as email. During the assessment proceedings, the appellant company was issued notices u/s. 143(2) and 142(1) on 4.7.2019 and the appellant company was requested to file certain details mentioned in the questionnaire enclosed along with it. As there was no response to the notices issued by the Revenue, the Ld. AO completed the assessment by making addition of 50 lakhs under section 68 of the Act towards unexplained share capital. Second addition made by the Ld. AO is regarding unexplained cash credit u/s. 68 of the Act to the extent of Rs. 24,05,77,100/-. The appellant company did not furnish the explanation regarding source of deposits made into the HDFC bank to the extent of Rs. 24,05,77,100/-. The Ld. AO has added this amount also u/s. 68 of the Act because the genuineness of the amount deposited remained unproved. Thus, both the additions of Rs. 50 lakhs and Rs. 24,05,77,100/- were made towards unexplained share capital and unexplained cash credit in HDFC bank account respectively while completing the scrutiny assessment.

3. Aggrieved by the additions made by the Ld. AO, an appeal was filed before the learned Commissioner of Income Tax (Appeals) [the Ld. CIT(A) for short] stating that the additions made by the Ld. AO are not correct. There was no specific ground taken before the Ld. CIT(A), nor appellant company responded to the notices issued by the Ld. CIT(A) and hence additions made by the Ld. AO were confirmed.

4. Further aggrieved by the orders of the Ld. AO and the Ld. CIT(A), appellant company filed appeal before the ITAT stating that reopening of the assessment u/s. 147 was incorrect and without considering the fact and circumstances of the case. Next ground taken before the ITAT is that the Ld. CIT(A) erred in confirming the additions made by the Ld. AO with regard to share capital and cash credits.

5. During the appeal proceedings before the ITAT, Ld. AR of the appellant company Shri Gaurav Kabra has appeared virtually and requested to give one more opportunity to explain source of share capital and cash credits. Ld. AR of the

appellant has mentioned that due to certain unavoidable circumstances, details could not be furnished before the lower authorities and he pleaded that one more opportunity may be given to the appellant company to explain source of share capital received from M/s. Asan Investment & Financial Services Pvt. Ltd. and also source of deposits made into the HDFC bank account.

6. Ld. DR has opposed the plea of the Ld. AR of the appellant company and argued that sufficient number of opportunities were already given to the appellant company to submit details of both the additions made in the assessment order. The appellant company did not furnish the details despite several opportunities given to them. Hence, Ld. DR has argued that the additions made in the assessment order should be confirmed.

7. After hearing rival submissions, it is decided that one more opportunity should be given to the appellant company. Hence, the issue is remitted back to the file of the Ld. CIT(A) who is directed to give an opportunity to the appellant to provide all required details relating to share capital and cash deposits made during the assessment concerned. From the orders of the Ld. AO and the Ld. CIT(A), it is observed that the appellant company was not cooperating with the Department and not providing details relating to the share capital and cash deposits, hence the appellant company is directed to submit all the details and cooperate with the Department to prove its case. The Ld. CIT(A) is directed to give reasonable opportunity and expedite completion of appeal proceedings.

8. The appeal of the appellant is allowed for statistical purposes.

Order pronounced in the open court on 29th October, 2024.

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Omkareshwar Chidara)
Accountant Member

Mumbai : 29.10.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai