

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 सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 1392/Kol/2024
Assessment Year: 2019-20

DCIT, Central Circle-3(1), Kolkata	Vs.	South Calcutta Diesels Pvt. Ltd. (PAN: AABCK 3162 D)
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

C.O. No. 23/Kol/2024
(Arising out of I.T.A. No. 1392/Kol/2024)
Assessment Year: 2019-20

South Calcutta Diesels Pvt. Ltd. (PAN: AABCK 3162 D)	Vs.	DCIT, Central Circle-3(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	17.10.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	20.11.2024
For the Appellant/ निर्धारिती की ओर से	Shri S. Jhajharia, A.R
For the Respondent/ राजस्व की ओर से	Shri Divakar Chakraborty, Addl. CIT Sr. D.R

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the revenue and the cross-objection 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 18.01.2024 for the AY 2019-20.

2. After hearing the both the parties, we find that there is a delay of 98 days in filing the appeal of the revenue. From the facts on record, we find that the delay in filing the appeal of the revenue is for bonafide reasons and therefore, the delay is condoned and the appeal is admitted for adjudication.

3. The revenue has filed the instant appeal against the order of Ld. CIT(A) deleting of addition of Rs. 90 Lacs which was made by the AO u/s 68 of the Act whereas the assessee has filed cross objection in support of order passed by the Ld. CIT(A).

4. At the outset, the ld. Counsel for the assessee filed before the Bench that calculation of tax and submitted that the total tax on the said addition worked out to Rs. 58,80,000/- in terms of Circular No. 9/2024 on 17.09.2024 whereas the limit for filing the appeal before the Tribunal was fixed at Rs. 60,00,000/- and therefore the appeal is not maintainable. The said arguments of the assessee was countered by the Ld. Sr. D.R by submitting that the issue is not covered by the Circular No. 9/2024 dated 17.09.2024 as the issue of unsecured loan is ex-facie covered in the exception clause provided in the said circular and therefore the appeal may be decided on merit.

5. Facts in brief are that the assessee filed return of income on 30.09.2019 declaring total income of Rs. 68,75,760/-. A search action was conducted on 13.01.2021 and subsequent dates against the hospitality group of cases of which the assessee company is part of the said group and therefore was also covered under the said search operation. The statutory notices u/s 153A of the Act was issued on 10.11.2021 and served on the assessee which was complied with by filing the return of income on 26.11.2021

declaring same income as declared in the original return of income. The AO during the course of assessment proceedings observed that the assessee has been found to have indulged in ploughing back unaccounted money through unsecured loans through accommodation entries by entry operators. The AO on perusal of the record noted that the assessee has received unsecured loan to the tune of Rs. 3,53,76,904/- during the relevant assessment year from the two lender companies namely Goodpoint Real Estate Pvt. Ltd. and Top Class Logistics Pvt. Ltd. Thereafter the AO by referring to statement of Shri Lalit Kumar Todi, one of the key persons of the Todi Group recorded during the search operation on that group and was confronted with the above facts and asked to explain the same while recording of statement u/s 132(4) of the Act on 14.01.2021 in which it was admitted that the said unexplained income was earned through the various markets brokers. Similarly, the AO noted that at page 5 that Shri Sunil Kumar Jain, one of the directors of Gitanjali Finance Ltd. which was also covered u/s 133A during the search action admitted to have arranged the capital through purchase of shell companies from market as well as through sale of shares. The AO finally treated the entire amount of unsecured loans and added the same u/s 68 of the Act to the income of the assessee in the assessment framed u/s 153A of the Act dated 30.03.2022.

6. In the appellate proceedings the Ld. CIT(A) allowed the appeal of the assessee by holding that the AO has not applied his mind to the facts available on record. The Ld CIT(A) observed and noted that out of total unsecured loans of Rs. 3,53,76,904/- ,substantial part was raised in the preceding assessment year. from Top class Logistic Pvt. Ltd. as the opening balance as on 1.4.2018 was Rs. 2,65,10,630/- and the loan taken by the assessee during the year from the said lender was only Rs. 25,00,000/-. The Ld. CIT(A) observed that the assessee has debited Rs. 25,10,630/- on account of repayments during the year and thus the closing balance as on 31.03.2019 was Rs. 2,98,76,850/- whereas in the case of M/s Goodpoint Real Estate Pvt. LTd. the entire loan amount of Rs. 50,00,000/- was taken during the F.Y 2018-19 and after adding interest and repayments ,the balance outstanding was Rs.55,00,054/- as on 31.03.2019. The aggregate of unsecured loans outstanding as on 31.3.2019 was Rs. 3,53,76,904/-. The Ld.

CIT(A) also noted that the assessee has filed all the evidences qua these loans before the AO during the assessment proceedings however the AO without application of mind added the entire amount outstanding as on 31.03.2019 of Rs. 3,53,76,904/- to the income of the assessee u/s 68 as unexplained cash credit. It was further observed by the Ld CIT(A) that the statement relied by the AO of Shri lalit Kumar Modi and Shri Sunil Kr. Jain were retracted and the AO without considering the retraction of statements by these individuals reached a conclusion qua the unsecured loan outstanding as on 31.03.2019 being unexplained and added the same to the income of the assessee. The Ld. CIT(A) noted that whereas the facts on record suggests to the contrary. The Ld. CIT(A) further recorded finding of fact that the only part of the total unsecured loans Rs. 75 Lacs was raised from these parties during the instant financial year after holding identity, creditworthiness of the lenders and genuineness of the parties were duly established by the assessee. The Ld. CIT(A) has recorded a detailed findings from page 37 to 41 of the appellate order and at page 50 as well as at 55.

7. Being aggrieved by the order of Ld. CIT(A) revenue partly challenged the order of Ld. CIT(A) deleting of addition to the extent of Rs. 75,00,000/- received from these two companies namely M/s Goodpoint Real Estate pvt. Ltd. Rs. 25,00,000/- and M/s Top Class Logistics Pvt. Ltd. Rs. 50,00,000/- after releasing the factual mistake committed by the AO while making the addition.

8. The Ld. D.R vehemently submitted before us that though the assessee has raised substantial part of the loans in the preceding assessment years from M/s Top Class Logistics Pvt. Ltd. but the fact remains that the loans raised Rs. 50,00,000/- from M/s Good point Real Estate Pvt. Ltd. and Rs. 25,00,000/- from M/s Top Class Logistics Pvt. Ltd. during the instant financial year for which the assessee has failed to furnish necessary evidences before the AO. The Ld. D.R therefore submitted that the issue of unsecured loans of Rs. 75,00,000/- raised from two parties may be restored to AO for verification.

9. The Ld. A.R on the other hand relied on the order of Ld. CIT(A) and submitted that the Ld. CIT(A) has given a very comprehensive finding of facts, however, the order passed by the AO was factually incorrect even unsecured loan raised in the earlier assessment year was wrongly added by ignoring the facts on record and the retraction statements of Lalit Kumar Modi and Mr Jain were duly available before the AO and the AO without considering these statements reached a wrong conclusion treating the entire outstanding unsecured loans as unexplained cash credit .The Ld. A.R therefore prayed that the cross objection filed by the assessee may kindly be allowed.

10. After hearing both the parties and perusing the material on record, we find that though the AO has added entire amount of unsecured loans of Rs. Rs. 3,53,76,904/- outstanding as 31.3.2019 by overlooking the facts available on records which testifies that out of the above amount there was opening balance of Rs. 2,65,10,630/- as on 1.4.2018 meaning thereby that the said amount was not raised during the instant financial year. The Ld. CIT(A) has correctly appreciated the facts on record and recorded a finding of fact at page 37 and also page 59 of the appellate order. We note that the assessee has filed all the evidences qua these loans before the AO proving identity, creditworthiness and genuineness of the transaction and parties. Consequently, we do not find any infirmity in the order of Ld. CIT(A) and the same is upheld by allowing the cross-objection of the assessee and dismissing the appeal of the revenue.

11. In the result, the appeal of the revenue is dismissed and the cross-objection by the assessee is allowed.

Order is pronounced in the open court on 20th November, 2024

Sd/-

Sd/-

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

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

Dated: 20th November, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- DCIT, Circle-3(1), Kolkata
2. Respondent – South Calcutta Diesels Pvt. Ltd., 225D, A. J.C. Bose Road, Kolkata-700020
3. Ld. CIT(A)- 21, 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