

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'B', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member

I.T.A. No.1512/Kol/2024
Assessment Year: 2016-17

Graphite & Mineral Products Appellant
C/o Subash Agarwal & Associates, Advocates,
Siddha Gibson,
1, Gibson Lane, Suite 213, 2nd floor,
Kolkata-700069.
(PAN: AACFG8697D)

vs.

ACIT, Circle-47, Kolkata Respondent

Appearances by:

Shri Siddharth Agarwal, AR appeared on behalf of the Appellant.

Shri P. P. Barman, Addl. CIT, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing :September 25, 2024

Date of pronouncing the order :November 21, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा/ Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 15.05.2024 of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as the "Ld. CIT(A)" passed u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") for Assessment Year (AY) 2016-17.

2. The assessee in this appeal is aggrieved by the actions of the lower authorities in making/confirming the addition of Rs.50,00,178/- by treating the loan received by the assessee as bogus and thereby adding the said amount as unexplained income of the assessee u/s. 68 of the Act. The assessee is also aggrieved by the actions of the lower authorities in further making addition of Rs.1,50,000/- by observing that assessee might have paid some commission to arrange this bogus transaction. Apart from the aforesaid issue on merits, the assessee has

also taken a legal ground relating to the validity of the reopening of the assessment u/s. 147 of the Act.

3. First, we discuss the issue on merits. The Ld. Counsel for the assessee has invited our attention to the impugned assessment order as well as the impugned order of the Ld. CIT(A) to submit that the assessee during the year had raised loans of Rs.5,00,178/- from one party only i.e. Moontree Niketan Pvt. Ltd. (in short “M/s. MNPL”). The AO noted that as per the information received from the Investigation Wing, the said company was a shell company. He accordingly, treated the aforesaid transaction as bogus and added the aforesaid loan amount as income of the assessee from unexplained sources. The Ld. CIT(A) confirmed the addition as made by the AO.

4. The Ld. Counsel for the assessee has invited our attention to the impugned order of the Ld. CIT(A) to submit that the Ld. CIT(A) has duly noted that the assessee had explained before the Ld. CIT(A) that M/s. MNPL had net worth of Rs.996 Lakhs as on 31.03.2016 and that it had reported revenue from operations of Rs.10.65 Lakhs during the FY 2015-16. The Ld. Counsel has submitted that from the aforesaid fact, it was clear that the said creditor was not a shell company rather, it was an active compliant company and had filed income tax return and duly disclosed income from operations also. Further, the Ld. Counsel for the assessee has relied upon following documents to prove the identity and creditworthiness of the creditor and genuineness of the transaction:

a)	ITR Acknowledgment, Final Accounts and Bank Statement of Moontree Niketan (P) Ltd. for AY: 2016-17	Pages 47 to 60
b)	Source of Fund	Page 61
c)	Company Master Data	Page 62

5. The Ld. Counsel, from the aforesaid documents, has duly demonstrated that the concerned creditor had sufficient net worth to

advance the loans. It was an income tax assessee. The source of funds was also explained that the said funds were arranged after sale of shares by the said creditor. The amount was transferred through banking channel and the creditor company was active compliant company as per Company Master Data. The Ld. Counsel further inviting our attention to the relevant page of the paper book has demonstrated that the said loan was duly utilized by the assessee for its business purpose. It has also been demonstrated that even the AO had issued notice to the creditor in response to which the creditor duly replied to the show cause notice and confirmed that it advanced the said loan to the assessee and further the creditor has also enclosed with the said reply, the copy of audited annual accounts, copy of ITR Acknowledgment, copy of bank statement and also explained the source of funds with documentary evidence. Further, the Ld. Counsel has demonstrated that even the said loan was repaid by the assessee in the next financial year. Considering the voluminous evidence relied upon by the assessee, which was also furnished before the lower authorities, we do not find justification on the part of the lower authorities in making the impugned additions. The impugned additions made by the lower authorities are ordered to be deleted.

6. Since we have decided the issue on merits in favour of the assessee and at this stage, we are not inclined to adjudicate the legal issue relating to validity of reopening of assessment, as at this stage, it is rendered as academic in nature.

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

Order is pronounced in the open court on 21.11.2024

Sd/- **[Sanjay Awasthi]**
लेखा सदस्य/Accountant Member

Sd/- **[Sanjay Garg]**
न्यायिक सदस्य/Judicial Member

Dated: 21.11.2024.

JD

Copy of the order forwarded to:

1. **Appellant – Graphite & Mineral Products**
2. **Respondent – ACIT, Circle-47, Kolkata**
3. CIT(A), NFAC, Delhi
4. Pr. CIT,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches

1. Date of dictation- 20/11/2024
2. Date on which the typed draft order is placed before the Dictating Member and Other member
21/11/2024
3. Date on which the approved order comes to the Sr. P.S./P.S. - /11/2024
4. Date on which the file goes to the Bench Clerk /11/2024
5. Date on which the file goes to the O.S.
6. Date of Dispatch of the Order.....