

आयकर अपीलीय अधिकरण, कोलकाता पीठ "ए", कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "A" 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. 2074/Kol/2024

Assessment Year: 2011-12

ITO, Ward-2(1), Kolkata	Vs.	Unicorn Township Pvt. Ltd. (PAN: AAACU 9329 H)
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

C.O. No. 38/Kol/2024

(Arising out of I.T.A. No. 2074/Kol/2024)

Assessment Year: 2011-12

Unicorn Township Pvt. Ltd. (PAN: AAACU 9329 H)	Vs.	DCIT, Central Circle-3(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	28.11.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	02.12.2024
For the Appellant/ निर्धारिती की ओर से	Shri S. Jhajharia, FCA
For the Respondent/ राजस्व की ओर से	Shri Subhendu Dutta, CITDR

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)-21, Kolkata (hereinafter referred to as the "Ld. CIT(A)"] dated 18.06.2024 for the AY 2011-12.

2. At the outset, we note that there is a delay of 51 days in filing the appeal. After hearing both the sides and after considering the reasons as enumerated in the condonation petition and affidavit filed by the assessee, we find the reasons to be bonafide ,genuine and sufficient and accordingly condone the delay.

3. The revenue has challenged the order passed by the Ld. CIT(A) deleting the addition of Rs. 60,00,000/- made by the AO on account of unexplained cash credit u/s 68 of the Act and also Rs. 30,000/- u/s 69C and Rs. 15,000/- u/s 14A. The revenue has challenged the deletion of addition on merit and the assessee has filed cross-objection supporting the order of Commissioner of Income Tax (Appeal).

4. After hearing the rival contentions and perusing the material on record, we find that in this case, a search action u/s 132 of the Act was conducted on the assessee on 09.09.2015. During the course of search proceedings, several incriminating documents were found and seized. Accordingly notices u/s 153A was issued for six assessment years from 2010-11 to 2015-16 and which were made compliance thereto by filing a return of income. The AO has made addition of Rs. 60,00,000/- towards share capital/ share premium being an unexplained u/s 68 of the Act and Rs. 30,000/- u/s 69C @ 0.5% of the total share capital/share premium towards for arranging entries as commission beside addition of Rs. 15,000/- u/s 14A of the Act. We note that the AO has made addition on the basis of information furnished by the assessee meaning thereby that there was no incriminating material seized during search operation as there was no reference in the assessment order to that effect. Since the assessment

under consideration is unabated assessment on the date of search, therefore the jurisdiction of the AO to make the addition is limited to those items qua which the incriminating material was found and seized during the course of search. Therefore, in present case the addition was made without any incriminating material and thus the Ld. CIT(A) deleted the same on the ground that there was no incriminating material.

5. Considering the above facts and circumstances of the case, we are of the view that the case of the assessee is squarely covered by the decision of Hon'ble Supreme court in the case of *Pr. CIT Vs. Abhisar Buildwell (P) Ltd. [2023] 149 taxmann.com 399 (SC)* as there was no incriminating material found and seized during the course of search and therefore the AO has no jurisdiction to make additions. Consequently, we upheld the order of Ld. CIT(A) by dismissing the appeal of the revenue and the cross objection by the assessee becomes infructuous and is dismissed.

6. In the result, the appeal of the revenue as well as the cross objection of the assessee are dismissed.

Order is pronounced in the open court on 2nd December, 2024

Sd/-

Sd/-

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

(Rajesh Kumar/राजेश कुमार)

Judicial Member/न्यायिक सदस्य

Accountant Member/लेखा सदस्य

Dated: 2nd December, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- ITO, Ward-2(1), Kolkata& DCIT, Central Circle-3(2), Kolkata
2. Respondent – Unicorn Township Pvt. Ltd.
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