

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, KOLKATA

[Before Shri Rajesh Kumar, AM& Shri Pradip Kumar Choubey, JM]

I.T.A. No. 1432/Kol/2024

Assessment Year: 2015-16

DCIT, Central Circle-4(2), Kolkata	Vs.	Jyoti Patodia 10 th Floor, Flat No. 10B, 3A, Auckland Place, Circus Avenue, Kolkata-700017. (PAN: AFTPP9051L)
Appellant		Respondent

&

C.O. No. 27/Kol/2024

In I.T.A. No. 1432/Kol/2024

Assessment Year: 2015-16

Jyoti Patodia	Vs.	DCIT, Central Circle-4(2), Kolkata
Cross Objector		Respondent

Date of conclusion of Hearing	25.11.2024
Date of Pronouncement	05.12.2024
For the Assessee	Shri Siddarth Jhajharia, FCA
For the Revenue	Shri Subhendu Datta, CIT, DR

ORDER

Per Shri Rajesh Kumar, AM

The appeal filed by the revenue and the Cross Objection filed by the assessee are against the order of Ld. CIT(A), Kolkata-27 dated 07.03.2024 for AY 2015-16 arising out of assessment order passed u/s. 153A of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) by ACIT, Central Circle-4(2), Kolkata dated 30.03.2022.

2. The revenue has challenged the order of Ld. CIT(A) deleting the addition of Rs.41,25,150/- as made by the AO on account of unexplained cash credit u/s. 68 of the Act in respect of long term capital gain derived from sale of penny stock.

3. The facts in brief are that the assessee filed the return of income u/s. 139(1) of the Act on 30.09.2015 declaring total income at Rs.13,63,770/- after claiming deduction under

Chapter VIA of Rs.1,65,000/-. Thereafter, search action was conducted on 11.02.2020 and subsequent dates against the Patodia Group. Since the assessee was related to the Patodia Group, notice u/s. 153A of the Act was issued on 30.08.2021 which was complied with by assessee by filing the return of income. Thereafter, statutory notices were issued and served upon the assessee. AO during the course of assessment proceeding observed that assessee has sold shares of Sunstar Realty Development Ltd. and booked long term capital gain of Rs.41,25,150/-. According to the information received, the said stock is a penny stock and accordingly, the assessee was issued show cause notice as to why the gain should not be treated as bogus and added to the total income of the assessee, which was replied by the assessee. The AO after perusing the reply of the assessee came to the conclusion that assessee purchased the equity share for a consideration of Rs.2,40,000/- and sold for a consideration of Rs.41,25,150/- on 31.10.2014, 17.11.2014 & 18.12.2014 thereby booked the capital gain of Rs.38,82,090/-, which was claimed u/s. 10(38) of the Act. Finally, the AO, after discussing the modus operandi of penny stocks, treated the entire sale consideration of Rs.41,25,150/- as unexplained cash credit and added to the income of the assessee.

4. In the appellate proceedings, the Ld. CIT(A) deleted the addition by holding that this being unabated assessment on the date of search and therefore addition made by the /ao was without jurisdiction as in terms of provision of section 153A, in case of unabated assessment year, the addition could only be made with reference to incriminating material seized during the course of search. Ld. CIT(A) noted that since there was no incriminating material found and seized during the course of search qua this equity share and, therefore, AO has no jurisdiction to make the addition in the assessment framed u/s. 143(3) of the Act.

4. After hearing the rival contentions and perusing the material available on record, we find that the order of Ld. CIT(A) has clearly recorded a finding of fact that AO has not referred to any incriminating material found during the course of search qua the scrip sold by the assessee during the year. Accordingly, we are in agreement with the Ld. CIT(A) that addition in case of unabated assessment year can only be made on the basis of search material found and seized. 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), wherein the Hon'ble Supreme Court has held that in the case of non-abated/completed assessments, no addition can be made by the Assessing Officer in an assessment carried out u/s.153A of the Act in the absence of any incriminating material found during the search action. Accordingly, we are inclined to dismiss the appeal of the revenue by upholding the order of Ld. CIT(A). Appeal of the revenue is dismissed.

5. Cross Objection of the assessee is in support of the order of the Ld. CIT(A) and is accordingly, dismissed as infructuous.

6. In the result, appeal of the revenue is dismissed and the Cross Objection of the assessee is also dismissed being infructuous.

Order is pronounced in the open court on 5th December, 2024

Sd/-

Sd/-

(Pradip Kumar Choubey)
Judicial Member

(Rajesh Kumar)
Accountant Member

Dated: 5th December, 2024

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–DCIT, Central Circle-4(2), Kolkata.
2. Respondent – Jyoti Patodya
3. CIT(A), Kolkata-27
4. Pr. CIT
5. DR, ITAT, Kolkata,
True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata